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5 -and-
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19 Chicago, Illinois 60602
20 Appearing for the City of Chicago.

21
22 SULLIVAN REPORTING COMPANY, by
23 Tracy L. Overocker, CSR

1 OPENING STATEMENTS

2 MR. MULROY PG 621

3 I N D E X

4	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
5	Thomas Puracchio	674	676			
6			683			
7	THOMAS ZACK	687	689			
8			712			
9			735			743
10				745	748	
11	VALERIE GRACE	749	753	769		771
12	BRIAN ROSS	772	778			780

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1		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	Respondents		
4	I and M		676
5	Respondents		
6	K & P		689
7	ZACK CROSS		
8	# 4&5	713	
9	# 6		
10	# 1 - 6		735
11	Respondents		
12	A,D,J and Q		752
13	GRACE CROSS		
14	# 1		755
15	# 2		761
16	CUB		
17	#1.0,3.0, 1.1, 3.1 and 3.2		777
18			
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1 JUDGE SAINSOT: By the authority vested in me
2 by the Illinois Commerce Commission, I now call
3 Docket No. 01-0707. It is the matter of the Illinois
4 Commerce Commission on its own motion versus the
5 Peoples Gas Light and Coke Company and it is a
6 reconciliation of revenues collected under gas
7 adjustment charges with actual costs prudently
8 incurred.

9 Would the parties present identify
10 themselves for the record, please.

11 MS. KLYASHEFF: Appearing for the Peoples Gas
12 Light and Coke Company, Thomas Mulroy, Mary Klyasheff
13 and Mark McGuire with McGuireWoods, 77 West Wacker,
14 Chicago, Illinois 60601.

15 MR. BRADY: Appearing on behalf of the Staff of
16 the Illinois Commerce Commission, Sean R. Brady and
17 James E. Weging, 160 North LaSalle Street,
18 Suite C-800, Chicago, Illinois 60601.

19 MR. JOLLY: Appearing on behalf of the City of
20 Chicago, Ronald D. Jolly, Conrad R. Reddick and J.
21 Mark Powell. Our address is 30 North LaSalle,
22 Suite 900, Chicago, Illinois 60602.

1 MR. KAMINSKI: Appearing from the Illinois
2 Attorney General's Office, Mark Kaminski, 100 West
3 Randolph Street, Chicago, Illinois 60601 on behalf of
4 the People of the State of Illinois.

5 MR. GAYNOR: Your Honor, Paul Gaynor from the
6 Attorney General's Office on behalf of the People of
7 the State of Illinois solely for the rule to show
8 cause issue.

9 JUDGE SAINSOT: Okay. That leads me to my
10 next --

11 MS. SODERNA: Appearing on behalf of Citizens
12 Utility Board, Julie Soderna, 208 South LaSalle,
13 Suite 1760, Chicago, Illinois 60604.

14 JUDGE SAINSOT: Are there any further
15 appearances?

16 (No response.)

17 JUDGE SAINSOT: Okay. Now I can address the
18 next matter. Are there any motions that the parties
19 wish to present?

20 (No response.)

21 JUDGE SAINSOT: There are no motions? What was
22 the point, then, of the letters that I received from

1 Mr. Kaminski and CUB?

2 MR. KAMINSKI: I'm sorry, your Honor, I wasn't
3 entirely sure what you -- I thought that you were --
4 the first thing that was going to be addressed was
5 your issue regarding a motion to show cause. That
6 was issued by you; correct?

7 JUDGE SAINSOT: Right. But that was issued by
8 me so that we'd all be on the same page at 10:00 a.m.
9 I'm a little unclear as to what CUB and the AG are
10 seeking from me -- before I get into Peoples Gas
11 Light and Coke Company what their behavior is, I need
12 to know what you want from me.

13 MR. GAYNOR: Your Honor, I can speak to that.
14 As Mr. Kaminski said in his letter, we received these
15 documents at the 11th hour. So there were 600 pages
16 of documents six days before this hearing commenced
17 or is to commence and we haven't had a chance to go
18 through the documents. And as we said in our letter
19 at the very least, we ought to have an opportunity --
20 we ought to have an opportunity to do that and we're
21 not sure how long that will take, number one.

22 And number two, certainly, we don't

1 believe that in the meantime Peoples Gas should be
2 able to rely upon those documents because,
3 presumably, they've had access to those documents the
4 whole time that they haven't been producing to us.

5 It's also my understanding from the
6 City that in addition to the 600 pages that were
7 produced on April 12th, the City on Friday received
8 another 200 pages of documents from Peoples Gas that
9 had not previously been produced. We haven't even
10 gotten those documents yet. So now --

11 JUDGE SAINSBOT: Those are different
12 documents --

13 MR. GAYNOR: That's my understanding, an
14 additional 200 pages of documents. So as we sit here
15 before your Honor right now, there are 800 pages of
16 documents that we have not been privy to to prepare
17 for this hearing and we wanted to notify your Honor
18 just as soon as we knew about that so that you could
19 be aware of it. And we think that it's appropriate
20 that we're here to discuss this behavior and that you
21 issued the rule to show cause and we can speak
22 specifically to that if your Honor would like.

1 MR. JOLLY: I would add on behalf of the City
2 that we did, in fact, receive an additional 200
3 documents. I got a call maybe around 5:00 o'clock or
4 so on Friday and had an additional 200 documents
5 delivered to me around 6:00. The documents have been
6 forwarded to our experts who have begun reviewing
7 them; but because we were preparing for trial, they
8 haven't had an opportunity to review anything in
9 depth. Their initial review shows that they are
10 documents that probably are relevant to this case and
11 we would ask for an opportunity to have a meaningful
12 chance to review those documents and, perhaps, at
13 some later point maybe have a status hearing, perhaps
14 two weeks or so into the future in which we can
15 decide if additional testimony is warranted based on
16 the late-filed documents.

17 And I would also, I guess, from our
18 perspective, just add that we think it would be
19 unfair for Peoples Gas to refer to any of these
20 documents during the trial as scheduled.

21 MR. GAYNOR: Your Honor, I'm sorry, I wanted to
22 just add a few more brief points. After you reopened

1 the record on March 15th, Staff submitted to Peoples
2 Gas a document request or data request and in that
3 request, these documents would have been covered. So
4 we're talking about March of 2004, over a year ago,
5 number one.

6 Number two, the AG's Office had asked
7 to be provided with any information that was -- that
8 would have been produced to either Staff or any other
9 intervenor, okay. By way of background, just so
10 that -- this had also been asked for -- this
11 information in other context and that's in the
12 context of the Attorney General's subpoena that was
13 served in January of 2004, again, over a year ago to
14 Peoples Energy and Peoples Gas and that was covered
15 by those -- that request.

16 In December of 2004, my office sent
17 Peoples Gas, Peoples Energy a letter informing them
18 that the information was covered by the prior
19 request, the subpoena, and specifically asked them to
20 produce the documents. Then Peoples Energy asked for
21 a meeting with us to discuss that. At that meeting
22 in January of 2005, so three months ago, again, we

1 asked for the documents, okay, and the only reason
2 I'm alluding to the subpoena is, if you look at the
3 documents that have been produced and if I may, your
4 Honor, I'll hand this document to you, I have copies
5 for Counsel, these are a copy of an example of the
6 pages they produced. If you look at the bottom of
7 that document, your Honor, it includes not just the
8 Bates stamp number from this proceeding before your
9 Honor, it also has a Bates stamp number relative to
10 our subpoena. So, presumably, Peoples produced these
11 documents because they thought it was covered by both
12 of these prior requests.

13 So -- I just wanted to give you the
14 background for how much history goes on here because
15 the rules talk about -- the code and rules here, the
16 Public Utilities Act and the rules promulgated
17 thereunder refer to the concept of, you know, what
18 sanctions are available. And it talks about,
19 specifically, the presence or absence of due
20 diligence on the part of the violator in attempting
21 to comply with the Act. And I would say that in
22 light of the fact that they had -- and I don't -- the

1 issue really isn't even where these documents
2 originated. The question is, it's six days before
3 trial and we're talking about one business day before
4 trial for 200 pages that we haven't even received.
5 And it's hard to talk about exactly what the
6 sanctions should be at this point because we haven't
7 had an adequate opportunity to review the documents.
8 So I just wanted to give you a little bit more
9 background, thank you.

10 JUDGE SAINSOT: So you're requesting a
11 sanction; but as I understand it, you don't know
12 exactly what sanction --

13 MR. GAYNOR: Well, I mean, the code in the law
14 talks about -- I should say the Public Utilities Act
15 says -- 5-202.1 talks about withholding of material
16 information in any proceeding shall be subject to a
17 civil penalty. If the Commission finds the person or
18 corporation has violated this section, the Commission
19 shall impose a penalty of not less than \$1,000 and
20 not greater than 500,000. And then it talks about
21 the Commission may consider any matters of record and
22 aggravation or mitigation of the penalty, including

1 but not limited to the presence or absence of due
2 diligence on the part of the violator in attempting
3 to comply with the Act. So I would just site your
4 Honor to this section because it also talks about
5 civil penalties in violation of the Act.

6 JUDGE SAINOT: But you're asking me to reserve
7 ruling until you can see what those documents --

8 MR. GAYNOR: Well, I'm asking that -- I'm
9 certainly not asking you to reserve ruling with
10 regard to civil penalties. That, I think, you can
11 address today. They didn't produce the document and
12 I think as exhibited by the behavior, they did not
13 engage in adequate due diligence to submit the
14 documents. But in addition to that in terms of
15 ultimately what the sanctions should be, it's a
16 little bit difficult. As we sit here now, since the
17 hearing is scheduled to begin today, at the very
18 least, Peoples should not be able to rely upon any of
19 these documents. And in going forward we think that
20 it's appropriate for your Honor to enter some kind of
21 order or rule with regard to our side after we've had
22 an opportunity to review the documents. We,

1 similarly have an opportunity in the future to either
2 present additional testimony, amend our expert
3 witness testimony or somehow, you know, present this
4 evidence in case the evidence is, in fact, determined
5 to be relevant to this proceeding.

6 JUDGE SAINSOT: And that leads me to my next
7 question and that is, I'm a little concerned whether
8 this is -- this new evidence is segregated because I
9 don't know what it is. You all know what documents
10 you've received, mas o menos, not exactly --

11 MR. GAYNOR: Menos, not mas.

12 JUDGE SAINSOT: Is that feasible to -- because
13 what I'm hearing from you is that you would like,
14 after the trial, an additional trial time to deal
15 with these documents on a trial level?

16 MR. GAYNOR: Absolutely.

17 MR. JOLLY: Again, assuming that we find, you
18 know, that we conclude that these documents are
19 relevant, again, our initial review by our experts
20 indicate that, yes, they appear to be relevant. The
21 documents involve ennovate, which is one of the
22 issues in this proceeding and they also occur and are

1 dated during the reconciliation period. And, again,
2 this is a very -- you know, initial review that there
3 has not been the opportunity to look at these
4 documents in depth; but we certainly would like an
5 opportunity to review these documents in depth and
6 get a better understanding as to what they are. And
7 then assuming that we think that they are relevant to
8 this case, then we would seek an opportunity to
9 supplement our testimony that's been -- that's
10 already been filed.

11 MR. BRADY: Your Honor, may I speak on behalf
12 of Staff?

13 JUDGE SAINSOT: Go ahead, Mr. Brady.

14 MR. BRADY: We also received documents the same
15 time that the government consumer parties received
16 the documents. We received 650 pages of documents, I
17 believe, it was last Tuesday and another 200-some on
18 Friday. We were intending to speak and address that
19 at this time and we share the City's view that we
20 have not had an opportunity to review these documents
21 at this time. They are during -- they have dates
22 that occurred within this reconcilliation period.

1 Since we haven't had an opportunity to review, we're
2 not exactly sure of the impact on this case.
3 Therefore, we would be sharing in the City's
4 recommendation that we'd be given time after this
5 hearing to review those documents, determine if --
6 the impact, have a status hearing and determine if
7 additional discovery is needed and additional
8 testimony that would be limited to these documents.
9 And I reserve any comment at this point on the
10 sanctions discussion.

11 MR. GAYNOR: But in terms of additional
12 discovery or presentation of evidence, it may be
13 appropriate as well, your Honor, that, you know,
14 Staff and Intervenors took various depositions in the
15 course of this proceeding and were not privy to these
16 documents when they were taking depositions. So they
17 haven't had a chance, you know, the intervenors and
18 Staff have not had a chance to probe any of Peoples'
19 witnesses on these documents as well and I just think
20 that it's important that your Honor take note of
21 that.

22 JUDGE SAINSOT: Okay. Is there anything

1 further? Now, I would like to hear from Peoples
2 counsel.

3 MS. KLYASHEFF: Well, let me answer the easy
4 question first. Peoples will not be using these
5 documents at all during this hearing for the simple
6 reason the documents pertaining to ennovate really
7 don't have any relevance to this hearing. The
8 proceeding is about Peoples' Gas' gas costs in fiscal
9 2001, it's not about ennovate. Nonetheless, as you
10 are aware, many documents -- and there is testimony
11 in the record related to ennovate. Consequently, the
12 Company has produced many documents about the
13 ennovate company. Those documents that are the
14 subject of today's discussion were obtained from
15 Enron Corporation in March of 2005, last month.
16 Peoples Gas or Peoples Energy obtained these
17 documents in connection with another matter, in
18 connection with the Attorney General's subpoena that
19 you've heard alluded to. We were asked to try to
20 track down a general ledger for ennovate. We went to
21 Enron Corporation and tried to get a financial-type
22 statement data or general ledger-type data from Enron

1 Corporation. We received that in connection with the
2 Attorney General's subpoena. We decided, given the
3 production of ennovate documents in this case, that
4 they would be turned over to the parties in this case
5 notwithstanding questions about the relevance of
6 them.

7 I also note that during this
8 proceeding there was a data request to the Company
9 requesting the general ledger of ennovate. The
10 Company objected to it. The matter was brought
11 before you. You ruled that Peoples Gas did not need
12 to produce ennovate's general ledger, the question
13 was overbroad. In terms of the specific documents
14 that were produced last week, we have reviewed them
15 to determine if, by chance, they were included in
16 prior production.

17 At this point, we have not reviewed
18 every single page but I can tell you that many of the
19 documents are identical to documents that were
20 produced electronically or on paper. We were able to
21 ascertain this by doing simple word searches of the
22 electronic production. For example, search ennovate

1 and balance sheets and we found exact duplicates in
2 some of what was turned over. In other cases we
3 found substantially similar documentation. For
4 example, the recent production may have included the
5 March 2001 balance sheet, the prior production may
6 have included that as part of multiple months of
7 balance sheet information.

8 And, finally, we have determined that
9 many of the documents were substantially similar to
10 prior production. For example, detail underlying
11 balance sheets may have been produced in a different
12 form.

13 I mentioned that the documents were
14 obtained from Enron. You've heard people refer to
15 the depositions that were taken in this case. The
16 parties asked to depose former Enron employees as
17 well as Peoples employees, they could also have asked
18 for document production from Enron via a subpoena, I
19 don't believe that was done. I emphasize to you that
20 these documents came from Enron Corporation, they
21 were in Enron Corporation's possession and control.
22 The Company produced them timely after we received

1 them from Enron Corp. in connection with the other
2 matter. And to the extent we have been able to
3 review them, they do appear to substantially overlap
4 materials previously produced.

5 We don't think sanctions are warranted
6 in this matter. We don't think this upsets or delays
7 the hearings that are scheduled to take place this
8 week. However, if after the parties review them,
9 they believe that something additional is needed, we
10 certainly do not object to them coming to you and
11 making their proposal.

12 MR. GAYNOR: May I respond, your Honor?

13 JUDGE SAINSOT: I just have one question for
14 Miss Klyasheff. If you know, Miss Klyasheff,
15 normally when a judge rules a discovery question is
16 overbroad, the lawyer just redrafts the question more
17 specifically; was that done here?

18 MS. KLYASHEFF: No, it was not.

19 JUDGE SAINSOT: And excuse me, I have one more
20 question -- two more questions. You say that you
21 received these documents in March from Enron?

22 MS. KLYASHEFF: Yes.

1 JUDGE SAINSOT: When in March?

2 MS. KLYASHEFF: They came in two batches and
3 that's actually why they were sent out to the parties
4 in two batches. I believe one was in the first half
5 of the month and the second batch was in the middle
6 of the month. I'm sorry, I do not have the specific
7 dates.

8 JUDGE SAINSOT: Okay.

9 MR. MULROY: Your Honor, may I add one --

10 JUDGE SAINSOT: Go ahead.

11 MR. MULROY: -- because, you know, it's hard
12 for me not to speak when there's a crowd.

13 We also have, during the course of the
14 discovery and data requests in this case, turned over
15 ennovate's income tax return and the internal audit
16 which we performed of ennovate. The auditor who was
17 in charge of ennovate was deposed.

18 JUDGE SAINSOT: I have one more question and
19 that is, if these were -- if these documents, you got
20 these documents from Enron to satisfy the AG's
21 subpoena; is that right? Did I understand you right?

22 MS. KLYASHEFF: The AG was asking Peoples for a

1 general ledger of ennovate. While we questioned
2 whether we needed to go to Enron Corporation to
3 fulfill that requir- -- that request, we did so. So,
4 yes, we did it to respond to an inquiry from the AG
5 in connection with a subpoena.

6 JUDGE SAINSOT: Is this a subpoena that they
7 issued last year?

8 MS. KLYASHEFF: Yes, it is. They issue of the
9 general ledger came up again in early '05.

10 JUDGE SAINSOT: But why did it take you over a
11 year to get that information if it was to satisfy the
12 AG's subpoena?

13 MS. KLYASHEFF: The specific question about the
14 general ledger was raised more recently. The
15 subpoena did not include a question, Please produce
16 the general ledger. We produced documents under
17 Peoples Energy's control and position.

18 JUDGE SAINSOT: Any response?

19 MR. GAYNOR: Yeah, the first thing I have to
20 say is that Peoples Energy owned 50 percent of
21 ennovate, a Peoples Energy affiliate. They were an
22 owner of the company and I've looked at the LLC

1 agreement and the LLC agreement says that Peoples
2 Energy or its related entity is entitled to all
3 documents that -- that request, number one.

4 Number two, in March of 2002, Peoples
5 bought the other half of ennovate out of bankruptcy.
6 They owned 100 -- as we sit here now, they own
7 100 percent of that entity. So to say that they
8 didn't have control over this is an incredulity,
9 that's the first point.

10 The second thing is, your Honor, the
11 statement was made that Peoples won't be using the
12 documents because they're not relevant. Now my
13 understanding of the adversarial system within which
14 we operate here is that your Honor gets to determine
15 what is relevant at trial, not one side and then
16 withhold documents, that's not the way our system
17 works. You get to decide. Now it's convenient that
18 they don't want to use it for their side of the case
19 and then they've determined on their own that it's
20 not relevant so that we shouldn't be able to use it,
21 okay.

22 Peoples -- then we hear Peoples

1 obtained these documents in March. I don't care if
2 it was March 31st, it was March. It wasn't
3 April 11th, April 10th, April 9th, the first ten days
4 of April, it was March and they weren't produced in
5 March. Now the explanation for why it was produced
6 in two groups of documents is because they were
7 produced twice in March, not twice in April, twice in
8 March. So I don't -- you know, they think, I mean,
9 they're going to try to -- now they're going to try
10 to rely on your prior ruling, that it was overbroad.
11 All I know is, is that I have a sample of the
12 documents that were produced and it has two Bates
13 stamp numbers on it. It has the subpoena Bates stamp
14 number and this ICC proceeding Bates stamp number.

15 So Peoples on its -- they've
16 determined a couple of things. Number one, they have
17 determined it was covered by both the subpoena and
18 the document request in this ICC proceeding because
19 if they hadn't, they wouldn't have produced it.

20 Number two, you know, they've -- on
21 their own decided what's relevant before your Honor.
22 So I just don't think what they're saying is

1 credible.

2 JUDGE SAINSOT: Well, I agree with you,
3 Mr. Gaynor, that I'm the ultimate decider of -- for
4 better or for worse what's relevant and what's not.
5 I do think that Miss Klyasheff was just saying it's
6 not relevant in Peoples' view of the contents; but
7 that doesn't really matter. It's just -- I took it
8 as her perception, not as the ultimate ruling as to
9 relevance, just so we're clear.

10 MS. KLYASHEFF: If I may clarify a couple of
11 things, including that point. I made the point in
12 the context that Peoples will not be using those
13 documents as part of its case. It does not believe
14 they're relevant to the case. It will not be using
15 them. We're not saying we're objecting to other
16 people's introduction of the ennovate issue into the
17 case and if we do, we'll make the objection at the
18 appropriate time for your ruling.

19 JUDGE SAINSOT: Right. That's how I -- that's
20 the context I took it.

21 MR. GAYNOR: I know, it's just very hard for us
22 to determine whether we want to rely upon something

1 when it's produced, you know, on the eve of trial.
2 And to, you know, we've got -- it's a complicated
3 case, we have numerous experts, the experts could
4 have had the benefit of this and now we're sitting
5 before your Honor on the first day of trial without
6 the benefit of 800 pages of documents that they had
7 in March.

8 MS. KLYASHEFF: If I could also continue with
9 the point I wanted to clarify. I believe there was a
10 statement, That as we sit here today Peoples Energy
11 owns ennovate. Ennovate was actually discovered
12 about two and a half years ago, that company no
13 longer exists. Yes, ennovate was half owned by
14 People Energy between April 2000 and March 2002. It
15 was then fully owned by Peoples Energy until
16 September 2002 when it was dissolved. However, the
17 LLC agreement that was alluded to designated Enron as
18 the managing member of that limited liability
19 company. They maintained the records for the entity.

20 The fact is, Peoples Energy did not
21 maintain the records, it had some records, I mean.
22 It was obviously in receipt of things as a member of

1 the limited liability company, but it did not have
2 complete records. It was simply the way the business
3 was run, the managing member retained that type of
4 documentation, the managing member had the electronic
5 systems where certain data resided.

6 JUDGE SAINSOT: Anything further,
7 Miss Klyasheff?

8 MS. KLYASHEFF: We went to Enron Corporation to
9 get the documents when we were requested to try to
10 produce a general ledger, we went through the
11 proceeding with the personnel who handled bankruptcy
12 matters at Enron Corporation.

13 JUDGE SAINSOT: And when did you do that?

14 MS. KLYASHEFF: I don't know when we first made
15 the request. In March is when we first received
16 information from them.

17 JUDGE SAINSOT: Well, roughly?

18 MS. KLYASHEFF: Probably the request was first
19 made in, I'll say, January or February.

20 JUDGE SAINSOT: Of this year?

21 MS. KLYASHEFF: Yes, of '05. Essentially,
22 Enron Corporation maintains a facility where they try

1 to respond to requests from their umpteen creditors
2 in the bankruptcy proceeding. We were one of many
3 companies going to them with a request. They did
4 find documents. They sent them to us. That's why it
5 got produced.

6 MR. GAYLOR: The subpoena covered these
7 documents as did the ICC document request. We -- in
8 December sent them a letter, your Honor, in December
9 of last year specifically saying the subpoena covers
10 these documents and we just, you know, we want you to
11 be aware they cover it and we expect you to get it.
12 The discovery rules talk about custody and control.
13 Custody and control. Now, maybe they're telling you
14 they didn't have custody, but certainly they were
15 able to get the documents somehow. And I'm telling
16 you that in light of the fact that they -- you know,
17 so now they're relying on the fact that we bought the
18 other half of the company but we dissolved it so it
19 no longer exists, I mean, so then -- I mean, does --
20 they're not telling you that the documents evaporated
21 because they produced them to us.

22 JUDGE SAINSOT: All right. Here's what I'm

1 going to do temporarily: I would like some time
2 to -- I'm not going to make a ruling at this time
3 about sanctions, however, certainly to the extent
4 that there may be additional evidence that we may
5 need to take, we will deal with that at the end of
6 trial and set a quick status date to determine what
7 is outstanding and then go from there.

8 I would like to think a little bit
9 more about the sanctions issue before I impose
10 anything, if anything.

11 MR. MULROY: Your Honor, in the meantime, if we
12 could do so quickly in a day or two, we would propose
13 to submit a paper outlining what we told you today so
14 you have it in front of you, if you'd like.

15 MR. GAYNOR: Your Honor, it's on the record.
16 They just told you what they said to you. We can
17 read the transcript. We don't need to be on a
18 briefing schedule on the sun rising in the east.
19 They just told you what they did. Why do we now have
20 to brief it?

21 MR. MULROY: No need to be flip. I was
22 offering to put into writing what we had to go

1 through to get these, which took us weeks and weeks
2 and weeks because of the line we had to stand in at
3 Enron.

4 If you don't think that summary would
5 help you, then I won't give it to you.

6 JUDGE SAINSOT: So, Mr. Mulroy, you're saying
7 it's not that easy to get documents from Enron?

8 MR. MULROY: Yes, ma'am.

9 JUDGE SAINSOT: What I will take is an
10 affidavit from someone outlining what went through --
11 whoever requested them, I think that's fine.

12 MR. GAYNOR: An affidavit would be fine.

13 JUDGE SAINSOT: All right. Can we proceed to
14 opening statements?

15 MR. GAYNOR: Thank you for your time, your
16 Honor.

17 JUDGE SAINSOT: Thank you.

18 OPENING STATEMENT

19 BY

20 MR. MULROY:

21 I have to put this on the counsel table
22 because my eyes are now 100 percent shot. Apparently

1 after age 55 your eyes go and nobody ever told me
2 that before.

3 I want to thank you for the opportunity to
4 present this opening statement to you. I know that
5 in this kind of context it's not usually done. We
6 have agreed among ourselves to try to keep these
7 opening statements short and I know my friends on the
8 other side are going to try to keep to that.

9 The purpose of the opening statement is to
10 tell you or to provide for you a context that you can
11 put the evidence into. The evidence in this case, of
12 course, has already been filed, you've already read
13 it.

14 In this reconciliation year, we spent
15 \$800 million to buy gas for our -- about 900,000
16 customers. It's a service we provide, as you know.
17 The idea is -- our priority in our company is to
18 reliably provide gas service to our end users safely
19 and at a reasonable cost. There is no profit to the
20 Company when it purchases this gas and provides this
21 service to our end users.

22 The question for you is whether in this

1 reconcilliation year, the decisions that we made and
2 the actions that we took to provide this service were
3 prudent. The rule is -- that you're very familiar
4 with -- is that you should not use or may not use
5 hindsight in deciding whether or not we were prudent
6 and there's an obvious reason for this. If you could
7 use hindsight, we wouldn't need to have this hearing
8 at all, we could just look at the newspapers and see
9 what the gas prices were and then we could criticize
10 what we had done.

11 As I said to you a minute ago, your Honor,
12 the evidence is in already, so this proceeding is
13 primarily for you to listen to the cross-examination
14 and to see whether the intervenors and the Staff will
15 be able to show you that the decisions and the
16 actions that we took in this case were not prudent.
17 The time for allegation without support has finally
18 ended, we're now relying on the record, which has
19 been filed before you, and you will be able to hear
20 our witnesses be tested under cross-examination by
21 able lawyers.

22 I have this chart here which I don't know

1 whether you have the same physical issues that I do;
2 but Mr. Brady, of course, has blocked your view from
3 me, no doubt intentionally. The --

4 JUDGE SAINSOT: I can see it, Mr. Mulroy.

5 MR. MULROY: Maybe I'll put it in front of you.
6 We provide three services as a company. The first
7 service we provide is, we transport -- actually, I'm
8 going to start with number two. The first service we
9 provide is that we transport to customers gas that's
10 bought by them. For instance -- and my friend Ron
11 Jolly represents the City of Chicago. The City of
12 Chicago does not buy gas from Peoples, it buys its
13 own gas from another company and hires us to
14 transport the gas to the city for a fee which is set
15 out. That, of c- -- that's 40 percent of our
16 transportation business, that has no effect on this
17 rate case, the gas is not ours, it's not paid for by
18 the rate payers, it's a service we provide to the
19 City of Chicago and to others, it's not just the City
20 of Chicago.

21 The second service that we provide is
22 the hub service which you've heard so much about.

1 The hub service is, since we have excess storage, we
2 are able to take third party customers gas and store
3 it in our Manlove Field for a few or we transport it
4 from A to B for a third party. Why would a third
5 party want to do this? The answer is, is that they
6 have an oversupply of gas and they don't have any
7 place to store it or they want to store the gas and
8 play the market. Maybe the gas rises, maybe it
9 falls, they store it for a fee, that's called a hub
10 services. We recover the cost of that service in our
11 base rates. This is an issue for you to decide in
12 case, we'll brief it and argue about it. And we also
13 credit the revenue that we make from this hub service
14 to our end users, to our rate payers in our base
15 rates.

16 And, finally, the third service that
17 we provide is a rate payer service, the end user
18 service. When you turn on your oven, you've bought
19 the gas, that's the service I'm talking about now.
20 And that's divided also into three parts. This
21 context, I suggest to you is very important for you
22 so that you can pin issues -- the 11 issues that are

1 at issue in this case, so you can pin them into a
2 spot.

3 The rate payer service begins with our
4 extensive planning, which we do each year in order to
5 make certain that we have enough supply planned for
6 to meet end users daily requests. And you should
7 keep in mind that the daily requests in the Midwest,
8 in the city of Chicago are unbelievable in the
9 swings. On Monday, the rate payers can use 350,000
10 decatherms of gas. On Tuesday, they can use a
11 billion cubic feet. You have to order your gas the
12 day before and you got to be ready to provide it
13 whatever the weather and whatever the demand; and
14 interestingly, the demand and the weather aren't
15 always the same.

16 So the way we plan for our ability to
17 deliver this service every year, it's been consistent
18 over the years is this: We plan on using 40 percent
19 of the rate payer gas from our storage, our storage
20 fields -- we have our own called Manlove Field and we
21 also have storage capacity on pipelines. And we buy
22 60 percent of our gas during the winter and we do

1 that because, actually, gas can be cheap in the
2 winter. And we do that because it gives us much more
3 flexibility to get an even more reasonable cost.

4 In our connection with our planning,
5 we billed in a design day, a hypothetical day in
6 January where the temperature is 20 degrees below
7 zero and we add -- we add a cushion to the total
8 amount of volume that we're going to need for the
9 season. Our daily purchases -- we nominate the gas
10 on a Monday and then it's delivered Tuesday, it's
11 irrevocable once you nominate it or order it, the
12 same thing. When you order it, you order 400,000
13 decatherms, it's going to show up tomorrow no matter
14 what. If that wasn't enough, you have to go into
15 your storage. If that was too much, you're in an
16 oversupply situation and you have to deal with that
17 oversupply.

18 We buy the gas, not the rate payers.
19 We own the gas, not the rate payers. We have to
20 manage the gas, not the rate payers. This is the
21 context that you're going to hear all these issues
22 will fit into because it's -- I think, I suggest to

1 you that it's extremely important when reviewing this
2 matter to keep in mind when you hear an issue, ask
3 yourself whose gas are we talking about right now?
4 Is it the City of Chicago's gas? Is it hub's stored
5 gas, is it our gas that we bought? When was this gas
6 contracted for? Because early in the game when we're
7 doing planning, we contract with a bunch of
8 suppliers, so that we can nominate gas from them on a
9 daily basis. And it's important for you to decide
10 why these transactions that you're going to be
11 hearing about, why did they happen? Were we in an
12 oversupply situation? Did we have to sell gas? Did
13 we have an existing contract that we had to buy gas
14 on that day? Or were we engaged in a transportation
15 service for a third party? These concepts have been
16 confused in the depositions. These concepts may be
17 confused here in this hearing.

18 We welcome the opportunity for you to
19 listen to this cross-examination. We delight in the
20 hope that you may ask a lot of questions yourself
21 because our witnesses have been prepared to answer
22 whatever questions you have.

1 There are also some crucial concepts
2 that I won't dwell on now because they're in the
3 evidence. One is, nobody manages our storage but us.
4 Nobody manages our storage but us. And no one shares
5 in our hub revenue and that is the storage of other
6 people's gas and the transportation of other people's
7 gas but us.

8 Every year I told you that 60 percent
9 of the gas that we provide our rate payers we buy
10 during the winter. Each day in the winter pursuant
11 to contracts puts into place during our planning
12 season, we go to those suppliers and we buy gas and
13 that's where the GPAA comes in. We signed this -- a
14 GPAA, a gas purchase agreement with Enron in 1999.
15 It was -- actually, the genesis of it was when we
16 filed a petition with the ICC to ask for a fixed
17 contract, we later withdrew that; but in connection
18 with our review of the suppliers who could handle
19 that load, and we buy an enormous amount of gas for
20 our service every year. We sent out our FQ's and we
21 identified Enron. We decided to withdraw our
22 application for a fixed price gas, instead we entered

1 into this GPAA which turned out to be a \$600 million
2 contract, which is how much gas we bought during the
3 year under the GPAA.

4 We also had to deal with other
5 suppliers, that was only two-thirds of our yearly
6 supply. You will rule on the prudence of this --
7 decisions we made to enter into this contract. You
8 will hear and have read the evidence that's in the
9 record about why we made the decisions to enter into
10 the terms of the GPAA. And you'll be able to hear
11 the cross-examination as to why those terms were
12 prudent and you'll be able to hear the answers given
13 by the witnesses. I will not go into each item of
14 the GPAA which is very thick and very complicated but
15 it will be easy for you to understand after you've
16 heard the testimony.

17 There was four ways to price the GPAA
18 all at market. There was a base quantity that we
19 could buy from Enron under this contract, it was
20 priced at the Chicago City Gate Index and we received
21 a 3 cent credit for the transportation costs. Not
22 only do you have to buy gas, but you have to

1 transport it up here on a pipeline.

2 There was a summer incremental
3 quantity provision which let us refill our storage in
4 the summer because we inject some storage in the
5 summer.

6 And there was a -- this is also
7 marketplace, there was a daily incremental quantity
8 in case we ran into a terrible weather need, in case
9 it dropped down to 19 below zero in January and
10 stayed that way until February, and that was at an
11 index price.

12 And, finally, there was a resale
13 provision in the GPAA so that if we found ourselves
14 in an oversupply situation once again because of the
15 weather or the demand, we could -- had a market to
16 sell this gas to Enron. Interestingly, the GPAA was
17 reviewed by our friends at the Staff a year before
18 last year's reconcilliation case they asked it --
19 from us in a data request and it was considered in
20 last year's reconcilliation case, of course, we gave
21 it to Staff. There was no issue of imprudence
22 raised, there was no disallowance raised and there

1 was no criticism of any of the terms and there was
2 certainly no criticism of the fact that we used Enron
3 as the person -- as the company to support this
4 contract.

5 The evidence of prudence, you'll hear
6 and is in the evidence and it's this, although there
7 are others. The first thing is, it ensured us and
8 our customers a market price.

9 Second, it gave us the flexibility to
10 deal with changing weather conditions and changing
11 demand conditions.

12 Thirdly, it dramatically reduced the
13 number of suppliers that we had to deal with,
14 reducing our costs and reducing the chance for a
15 mistake. It ensured reliable delivery and supply
16 availability. It gave a market price without a
17 demand charge which -- in a big contract like this
18 where you're asking for them to be able to supply
19 this large amount, to not have an extra demand charge
20 built in is a very valuable thing.

21 The 3 cent transportation credit that
22 I referred to a minute ago is that it actually gave

1 us a value for the transportation provisions in the
2 contract in the face of what the Company believed was
3 going to be a decline in the value of transportation,
4 you'll also hear about that in the evidence.

5 The pricing in the GPAA compared
6 favorably to what the pricing had been in 1998 and
7 1999, the year before the GPAA and that's the
8 evidence. And it's also the evidence that the
9 pricing for five years before 1999, when we entered
10 into the GPAA, was consistent with the five years of
11 pricing of the GPAA, that also is in the evidence.

12 You will hear the cross-examination of
13 our witnesses who entered into this GPAA. I'm sure
14 that these lawyers will ask them difficult questions
15 about the prudence of their decisions and you will be
16 able to judge for yourself whether the answers that
17 they give you show prudence.

18 You can only go into this kind of a
19 contract, two-thirds of your yearly supply with the
20 big guy. You can only do it with the big gorilla.
21 You can only do it with somebody who is going to show
22 up when you ring the bell. You can't be signing one

1 of these contracts with somebody who then goes out of
2 business. You have to sign them with somebody who is
3 strong enough to be there or that in itself would be
4 imprudent. And in 1999, whatever we think of them
5 now, Enron was the darling of Wall street. Enron was
6 world famous. Enron was the person that you wanted
7 to deal with in this utility.

8 It's also interesting to note that --
9 just kind of as a side, I've put up the 11 issues
10 here and the amounts of disallowance that each of the
11 parties are asking for. I have a human chart holder,
12 this will cost me extra. Here's the GPAA
13 disallowance by the Attorney General. The Attorney
14 General, like all my friend lawyers over there, have
15 been working on this case for four or five years.
16 The Attorney General says this \$600 million contract,
17 the GPAA, you should disallow \$8 million, I think
18 that's 1 percent, but I'm not sure. That, in itself
19 shows, I suggest to you, the prudence of this kind of
20 a contract. Although, we argued in our testimony
21 that that calculation is incorrect. We don't think
22 that there should be any disallowance because of the

1 GPAA.

2 The Staff, my friends -- lawyers at
3 the Staff have argued they should have done this the
4 old-fashioned way. You shouldn't have gone into
5 business with one biggy, you should have gone back to
6 your 20, 25 suppliers and the rate payers would have
7 paid less money. Unfortunately, like so many issues
8 in this case, that analysis, as you will see from the
9 evidence, was done by hindsight. Well, when we look
10 back now, it would have been cheaper. We didn't have
11 the ability to use hindsight when we entered into
12 this GPAA. The law says that you are not supposed to
13 use hindsight when you review whether our decisions
14 to enter into this was prudent. That's the 60
15 percent of the flowing gas that we buy every year for
16 our customers. The 40 percent -- and that involves
17 the GPAA and that involves a lot of the other 11
18 issues in this case.

19 The second part of source for gas
20 service we take from storage. We have two places for
21 storage. One, we are fortunate enough to own our own
22 storage field called Manlove Storage Field and we

1 also lease pipeline capacity to store gas. We begin
2 injecting our storage fields in March and keep
3 injecting them until December. We begin withdrawing
4 in November. After our injection of storage into
5 Manlove, there remains excess capacity for us to do
6 our hub transactions, for us to be able to store
7 other people's gas for a fee like I've already talked
8 about. Our hub services and our transportation for
9 third party customers never interfere with our
10 service to our rate payers. They never interfere
11 with the gas that we planned for our daily demand for
12 our services.

13 We have to manage Manlove Field
14 extremely carefully because it operates on pressure.
15 As you know, gas is stored underground and it floats
16 around in this big cavern and it's based on pressure.
17 You can get it out when the pressure is up. As the
18 pressure declines as you take more gas out, you go
19 into a declined curve and you can get less gas out.
20 You need to have that storage ready to go in case
21 February gets ugly, so it's called a declined curve.
22 We don't want to reach the declined point, which is

1 the end of the decline curve until late in January,
2 that's how we plan.

3 You will hear a great deal about our
4 planning for our storage and how maybe we should have
5 used storage earlier than we did. I suggest to you
6 that you'll find that testimony to be based on
7 hindsight. If we don't husband our storage gas, we
8 won't have reserves for the Chicago weather and since
9 we're in Chicago, that's all I need to say is it's
10 Chicago weather.

11 It's hard to say, like they do now,
12 you should have used your storage earlier, November,
13 December, January, were freezing, you should have
14 used your storage earlier, it's a hindsight position
15 that we didn't have the benefit of. February, March
16 and April could have been just as freezing and the
17 question is whether we prudent -- whether the
18 decisions we made about the storage were made
19 prudently. That's Manlove Field.

20 The second place that we have
21 storage -- and it's about 50/50 is on our leased
22 pipeline -- leased capacity on pipelines. We figured

1 that into our planning every year. And one the
2 issues that you'll have to decide in this case
3 relates to our storage and it relates to a storage
4 service that we bought from Natural Gas Pipeline.
5 Natural Gas has a pipeline, it sold the storage
6 service to people we bought, it's called NSS, great
7 service. You could nominate it, you could rush out
8 there and you could get it. So if all of a sudden it
9 was a bad day, it was freezing cold, snowing
10 everywhere, three feet of snow in front of your door,
11 we could get it out on NSS without waiting a day or
12 two after we had nominated it. So we bought it. We
13 bout this service from Natural Gas Pipeline.

14 The problem was, that it had this much
15 capacity (indicating). That's how much you had to
16 buy because of their tariff. You couldn't buy this
17 much (indicating), that's all we needed, so we bought
18 the whole thing and we designated this much
19 (indicating) as restricted capacity. We put our gas
20 in that we bought, that we had earmarked for the rate
21 payers right in there, restricted capacity, now we
22 got all this (indicating).

1 What we did in 1998 was, we hired a
2 marketer, TPC Corporation. We signed a contract with
3 them. We said, You manage this excess capacity. You
4 get gas. You use hub services. You get gas from
5 other people and put it into our excess,
6 non-restricted capacity area, split the revenue with
7 us and we'll pay you a fee for doing it. It worked
8 out fine. In the year 2000, we signed a contract
9 with Enron to replace TPC to do exactly the same
10 thing and it's called the Storage Optimization
11 Contract which you also will consider in connection
12 with this case. Enron only managed that excess
13 capacity that was not earmarked restricted capacity.
14 Enron never managed our storage, never managed our
15 gas. You will be able to hear the cross-examination
16 about this NSS Agreement and you will be able to hear
17 the -- about the prudence of the decisions that we
18 entered into.

19 The restricted capacity that we had on
20 this pipeline under NSS was for our seasonal use
21 only. That's the context for these issues, your
22 Honor. We did not have the use of hindsight when we

1 made these very difficult planning decisions, very
2 difficult storage decisions, very difficult decisions
3 on Monday and Tuesday and Wednesday how much to buy
4 for Thursday, Friday and Saturday. Our job is, our
5 charge is to provide adequate supply to our rate
6 payers, safely deliver it at a reasonable cost. Each
7 issue, except for refinery gas and ennovate, is in
8 the context that I just outlined for you. And since
9 ennovate came up this morning with such great
10 enthusiasm and fervor, I'd just like to finish by
11 just mentioning that to you. This was a limited
12 liability company formed between one of our
13 affiliates, Peoples Midwest and one of Enron's
14 affiliates, Enron Midwest. It's unrelated to rate
15 payers sales. We neither purchased gas from
16 ennovate, nor bought -- nor sold gas to ennovate.

17 Now, initially, we filled a petition
18 with the ICC asking for an exemption to do that but
19 we withdrew it. It was formed in April of 2000 like
20 Mary told you. It began business in June 2000 and as
21 you know, Enron went bankrupt in December of 2001,
22 it's about an 18-month swing. We bought it out of --

1 we bought their 50 percent share out of bankruptcy
2 and we dissolved it in September of 2000. It did --
3 its job was and you'll hear about this in the
4 testimony, in fact, the testimony is also about this,
5 that it did wholesale gas transactions in the
6 Midwest. It bought and sold gas in the Midwest and
7 it also did financial trading of future gas contracts
8 and also physical gas contracts.

9 It owned Trunkline, which is a name of
10 a company Firm Transportation and it was a customer
11 of our hub; but as I told you before, it never
12 managed our hub nor shared in any of our hub
13 revenues.

14 A team from Peoples Energy
15 Corporation, as I mentioned to you this morning,
16 audited ennovate in August 2001, comprised of a group
17 of Peoples Energy internal auditors, Peoples Energy
18 risk management employees and an external consultant
19 who we hired to do an audit of ennovate; and she was
20 an expert in derivative trading. The head auditor
21 was deposed in this case, as was -- the external
22 consultant was deposed. The audit found and the

1 auditors agreed, Management of ennovate's business of
2 processes was very good and exceeded that of many
3 entities that had been in business for years.
4 Trading activity was well-monitored. Enron and
5 ennovate staffs were very helpful and willing to
6 assist the auditors.

7 Ennovate, its work and its earnings
8 were disclosed in our annual reports, were disclosed
9 in our reports to the Securities and Exchange
10 Commission. In fact, in our 2000 annual report there
11 are 15 mentions of ennovate, I counted them myself,
12 and in 2001, there were 12 mentions of ennovate.

13 There is no evidence in this record
14 that has been filed, which you have read, that shows
15 any lack of prudence on our part or shows any adverse
16 affect on rate payers as a result of this disclosed,
17 discovered and audited business venture.

18 You should listen for the
19 cross-examination. You should see whether any
20 evidence appears now for the first time. I suggest
21 to you, it won't. Each of our gas transactions with
22 Enron under the GPAA have been scrutinized.

1 The \$600 million GPAA, our friends at
2 the Staff say there should be a \$13 million
3 disallowance. Our friends at the AG say \$8 million
4 and the others say a number higher. That could be
5 the most there could be in any kind of a disallowance
6 in connection with ennovate, even if you could prove
7 that there was a connection between ennovate and an
8 adverse reaction on the taxpayers. It's a point of
9 speculation without proof.

10 Finally, your Honor, this case has
11 certainly been fully discovered. We have responded
12 to over 800 data requests, which we were placed to
13 do. We had our officers, our CEO, our chairman of
14 the board sit for depositions, our auditors. I think
15 we had 14 or 15 depositions taken, we produced
16 millions of documents, both in paper and
17 electronically, the only new issues that have been
18 raised since February 2004 when you extended
19 discovery was ennovate -- the amount of loss and
20 unaccounted for gas which -- the evidence will be,
21 that information will be available before 2004 and
22 refinery gas.

1 The intervenors and the Staff requests
2 for disallowance are inconsistent with one another in
3 numbers ranging from, for instance, zero disallowance
4 in hedging to 230 million in hedging by the City.
5 The differences are, the Attorney General says we
6 should have a disallowance of 8 million total and CUB
7 and the City are 200 million and 325 million.

8 You will be able to hear the analysis
9 that they put forth through their expert witnesses
10 and to see whether they are consistent with one
11 another and whether they are consistent with us.
12 Usually in a manner like this where there is such
13 dramatic inconsistency both in numbers and theory and
14 issues, that indicates that the proof is lacking.
15 Thank you very much.

16 MR. JOLLY: Thank you, Judge Sainsot. My name
17 is Ron Jolly and I represent the City of Chicago. I
18 will be speaking this morning on behalf of the City,
19 CUB and the Attorney General's Office. Mr. Kaminski
20 would also like to add a few comments after I'm
21 finished.

22 This is the purchase gas adjustment

1 clause in a PGA reconcilliation proceeding for
2 Peoples Gas' fiscal year 2001. In all
3 reconcilliation proceedings, Section 9-228 of the
4 Public Utilities Act unequivocally places the burden
5 of proof on the utility. By expressed statutory
6 mandate, Peoples Gas has the burden of demonstrating
7 that the costs recovered through its fiscal year 2001
8 gas charge collections were reasonable, prudently
9 incurred and are accounted for as prescribed by
10 Commission regulations. If Peoples Gas fails to meet
11 this burden of prudence, the Commission then must
12 make a separate determination with a measure of harm
13 to rate payers resulting from the imprudent contract.

14 Staff and Intervenors have no
15 obligation to show that Peoples Gas was imprudent.
16 The burden lies completely with Peoples Gas. If the
17 record lacks any proof or proof on any aspect of
18 these issues or if the utility's proof is ambiguous
19 or unclear, then Peoples Gas has failed to meet its
20 burden. By law, any deficiency of proof, whether as
21 to the nature or genesis of certain costs or the
22 distinct task of measuring harm must be weighed

1 against Peoples Gas. This is the only lawful
2 framework for the Commission's consideration of the
3 evidence that will be presented. When the testimony
4 has been heard, it will be cleared that Peoples Gas
5 has utterly failed to meet its burden of proof.

6 Peoples Gas has argued in the
7 testimony and again this morning that the scope of
8 this case is limited to a simple accounting -- to a
9 simple accounting exercise and a narrow examination
10 of the purchases the utility made to its customers.
11 Illinois courts have held otherwise. The scope of
12 fuel adjustment clause or PGA proceedings is broader
13 than that. It certainly encompasses non-procurement
14 actions of the Utility that may affect even
15 indirectly, PGA or FAC charges paid by customers.

16 In BPI versus Illinois Commerce
17 Commission, 171 Ill App. 3d 948, the First District
18 affirmed the Commission's decision that ComEd refund
19 approximately \$70 million under the predecessor
20 Section 9-220. The
21 Commission did not find that the utility's purchase
22 of fuel was imprudent or that the price of fuel was

1 not reasonable. It found, instead -- it found that
2 imprudent, non-procurement utility actions led to the
3 increased costs that were disallowed.

4 On appeal, the utility argued that the
5 fuel reconcilliation proceedings are -- the utility
6 argued that fuel reconcilliation proceedings are
7 limited to determine whether a utility's purchases
8 for a fuel or power were prudent. The Court held
9 that this was, quote, an extremely narrow
10 interpretation of a broad grant of statutory power
11 and would also defy common sense. And that quote can
12 be found at 171 Ill App. 3d at 958.

13 Like BPI versus the Illinois Commerce
14 Commission, this case concerns consequences to rate
15 payers of non-procurement of utility conduct as well
16 as imprudent procurement practices. The evidence
17 presented by the City, CUB, the Attorney General's
18 Office and the Commission Staff properly investigates
19 the full range of Peoples Gas activities that
20 affected PGA costs. And Peoples Gas bears the burden
21 of establishing that its unregulated affiliates
22 activities with Enron did not raise costs for rate

1 payers.

2 For example, both City, CUB witness,
3 Lindy Decker and Staff witness, Diana Hathhorn
4 recommend that Peoples Gas refund approximately
5 \$20 million that was diverted to ennovate, the joint
6 venture of Peoples Energy Corporation and Enron
7 Corporation. The revenues made by ennovate were not
8 the result of direct purchases of gas by Peoples Gas;
9 but as I will explain later, there is no doubt that
10 the ennovate activities had a dramatic and direct
11 impact on the rates customers paid.

12 Miss Decker's and Miss Hathhorn's
13 common conclusion leads me to my next point. The
14 testimony you will hear in this case represents a
15 rare consensus of position among stakeholder parties.
16 In most major Commission cases, the record reflects
17 three distinct perspectives, the utilities, the
18 Commission Staff and the Intervenors. In this case,
19 with respect to the relationships of Peoples Gas, its
20 affiliates and subsidiaries of Enron Corporation, the
21 Commission Staff and Intervenors are in agreement on
22 almost all issues.

1 On the threshold issue of a
2 reconcilliation case, the prudence of claimed costs,
3 Staff and Intervenors agree that imprudent costs
4 recovered through Peoples Gas' fiscal year 2001 gas
5 charges. For example, both Staff and Intervenors
6 agree that the Gas Purchase and Agency Agreement or
7 GPAA was imprudent. Both Staff and Intervenors agree
8 that of the profits generated by ennovate came from
9 its use of PGA assets and costs. Both Staff and
10 Intervenors agree that Peoples Gas' use of its
11 Manlove Storage facility was imprudent. This
12 consensus is especially compelling because Staff and
13 Intervenor experts use distinct approaches in
14 analyzing the facts of this case. They're
15 substantially similar, fundamental conclusions
16 regarding Peoples Gas' imprudence rests on
17 independent foundations. Moreover, the parties whose
18 experts examined the Peoples Gas, Enron interactions
19 comprehensively agree that the harm to customers near
20 or exceeded \$100 million.

21 Staff and Intervenor experts also
22 agree what was driving these transactions, a strategy

1 of diverting revenues from Peoples Gas, the regulated
2 utility, to Peoples Energy and its unregulated
3 subsidiaries. To do this, Peoples Energy entered
4 into another a strategic partnership with Enron
5 Corporation dedicated to increasing Peoples Energy's
6 unregulated midstream revenues. Internal documents
7 will show that Peoples Energy anticipated that
8 midstream revenues would provides an ever increasing
9 contribution to the parent company's profits.

10 The strategy required a base of assets
11 that the unregulated affiliates did not have. The
12 available assets were those of Peoples Gas. These
13 assets -- included gas, contract storage and a
14 Manlove Storage facility -- were used to support the
15 midstream activities of unregulated Peoples Energy
16 and Enron affiliates.

17 The use of PGA assets is permissible
18 but the Commission rules require that revenues
19 generated through such transactions be used to offset
20 the PGA charges that customers pay. In violation of
21 these rules, the benefits of these transactions will
22 instead split among participating Enron and utility

1 affiliates, overriding Peoples Gas' obligations to
2 manage its PGA costs prudently on behalf of its
3 captive customers.

4 The strategy also used Enron Midwest
5 as a sham company to transfer revenues from Peoples
6 Gas to its unregulated affiliates and the affiliates
7 of Enron. To prevent self-dealing, the Public
8 Utilities Act prohibits utilities from conducting
9 business with its affiliates without receiving prior
10 Commission approval. Much of the revenues
11 transferred to the unregulated affiliates in this
12 case was done through ennovate, the Peoples Energy,
13 Enron joint venture. Because ennovate was an
14 affiliate of Peoples Gas, Enron Midwest was often
15 inserted as an intermediary to launder what would
16 otherwise be prohibited transactions.

17 As calculated by City, CUB witness,
18 Lindy Decker, the harm resulting from the Peoples
19 Energy/Enron transactions was substantial. The harm
20 results principally from two arrangements, the GPAA
21 and the ennovate joint venture. In the
22 reconcilliation period, the 5-year GPAA contract with

1 Enron provided Peoples Gas with some 66 percent of
2 its gas requirements. It was by far the single
3 largest cost for the item for the Utility yet, for
4 the single largest contract for its single largest
5 cost item.

6 Peoples Gas initially and repeatedly
7 claimed it had conducted no economic analysis to
8 determine if the contract was a good deal. The
9 Commission Staff rightly concludes that failing to
10 conduct an economic analysis of a contract of this
11 magnitude was in and of itself imprudent.

12 After discovery was reopened in
13 February 2004, the parties found an economic analysis
14 had, in fact been done. It was conducted by Mr. Roy
15 Rodriguez, a manager in Peoples Energy's Risk
16 Management Group. His analysis showed that the GPAA
17 was a loser for Peoples Gas and its customers. In
18 its prefiled testimony, Peoples Gas attempts to
19 denigrate Mr. Rodriguez's analysis; but at the time
20 Peoples Gas decided to enter into the GPA, the only
21 economic analysis available to Peoples Gas showed
22 that the GPAA was a bad deal for Peoples Gas and a

1 bad deal for its rate payers.

2 Independent of Mr. Rodriguez's
3 analysis, the terms of the GPAA alone showed that it
4 was a bad deal. Under various provisions of the
5 contract, Peoples Gas ceded control to Enron over the
6 price and the quantity of significant portions of the
7 gas supply it was required to buy. Not surprisingly,
8 Enron took advantage of these provisions to increase
9 its profits at the expense of Peoples Gas and its
10 customers.

11 The second harmful arrangement was
12 ennovate. Ennovate was at the center of the strategy
13 in a series of special deals designed to increase
14 revenues flowing to unregulated utility affiliates.
15 Incorporated at the end of April 2000 with an initial
16 capitol investment of only \$100,000 each from Peoples
17 Energy and Enron, ennovate had more than \$100 million
18 in revenue and made more than \$20 million of profit
19 during the reconcilliation period.

20 After reviewing the available
21 documentation, Staff and the City, CUB experts
22 concluded that the only plausible explanation for

1 ennovate's more than 10,000 percent profit on its
2 meager investment was its use of Peoples Gas' PGA
3 assets and costs. Peoples Gas has not offered any
4 plausible explanation for ennovate's questionable
5 deals or its extraordinary profits. The testimony
6 from Mr. Morrow, an ennovate board member, claimed
7 that ennovate earned its massive profits through
8 speculative trading and fiscal gas transactions in
9 the upper Midwest; but Mr. Morrow and ennovate's
10 parent firm, Peoples Energy Resources Corporation
11 could neither quantify ennovate's trading games nor
12 identify deals that yielded such excessive profits.
13 Absent the misappropriation of rate payer assets,
14 ennovate's miraculous \$20 million in profits in
15 fiscal year 2001 is inexplicable.

16 In addition, CUB witness, Mierzwa and
17 Staff witness, Rearden described how -- in deals like
18 the one called Manlove Jumpstart, Peoples Gas
19 imprudently transferred gas from its storage to Enron
20 affiliates during the record cold winter of 2000,
21 2001 and then was compelled to replace that gas for
22 its customers on the spot market which was then at

1 record highs. Under Manlove Jumpstart, Peoples Gas
2 transferred substantial amounts of gas from storage
3 to Enron Midwest during the last ten days of
4 November 2000, while during those same ten days,
5 purchasing the same amounts of gas at the record high
6 spot market prices from Enron Midwest. This was a
7 direct and blatant transfer of wealth from Peoples
8 Gas to Enron Midwest with Peoples Gas' customers left
9 to pick up the tab.

10 Besides the major transactions that
11 resulted in tens of millions of dollars and imprudent
12 costs for customers, Staff identified several smaller
13 deals that were especially pernicious. In these
14 arrangements, Enron Midwest often served as a sham
15 middle man to hide affiliate transactions that lack
16 Commission approval.

17 One example of such deal is the
18 refinery fuel gas or RFG. Pre-Enron, Peoples Gas
19 purchased RFG directly from an affiliate of Citco
20 Petroleum at a significant discount off of first of
21 month index price. To affect the RFG deal during the
22 reconcilliation period, Peoples Gas did not renew its

1 direct purchase agreement with Citco.

2 Instead, PERC, a Peoples Gas affiliate
3 purchased the RFG from the refinery at the same
4 discount off the first of month index price that
5 Peoples Gas had paid previously. PERC then sold the
6 RFG to Enron Midwest at a substantial profit but
7 still below the first of month index price. Then
8 Enron Midwest turned around and sold the gas to
9 Peoples Gas with another mark up but still coming in
10 below the first of month index price.

11 Incredibly, Peoples Gas has argued
12 that it should be applauded because rates payers
13 still got the gas for less than 100 percent first of
14 market index price.

15 A similar diversion deal described by
16 Staff is the Trunkline deal which, again, used Enron
17 Midwest as an intermediary to shield the deal from
18 Commission scrutiny. These deals were actual
19 transactions between ennovate and Peoples Gas that
20 yielded profits for Peoples Energy and Enron at the
21 expense of Peoples Gass rate payers.

22 Besides the Enron related

1 transactions, City, CUB witness, Decker also will
2 testify that rate payers incurred substantial and
3 prudent costs as a result of the dramatic and
4 unexplained increase in gas lost and unaccounted for
5 whereas -- or GLU by the Utility. The expected
6 testimony has generated a lot of clutter around this
7 issue.

8 Peoples Gas' witnesses will portray
9 its GLU numbers as falling within the broad range of
10 GLU performance by other gas utilities. While such
11 comparisons might show that Peoples Gas did not have
12 the worst GLU numbers ever, they also show an
13 unexplained explosion of GLU costs in the
14 reconcilliation year. The Utility's own words
15 confirm that cost spike. According to Peoples Gas
16 employees words, the GLUs -- the Utility's GLUs
17 skyrocketed. Other internal correspondence referred
18 to runaway GLU and another estimated the market costs
19 of the Utility's GLU to be \$40 million.

20 Peoples Gas does nothing to explain
21 the more than 400 percent increase and the loss of
22 gas in the reconcilliation period and a resulting

1 cost increase to customers or in any way demonstrate,
2 as the Act requires of the utility, that the costs
3 were reasonable and prudently incurred.

4 Finally, the picture of Peoples Gas'
5 imprudence would not be complete without discussing
6 its failure to hedge during fiscal year 2001. Both
7 City witness, John Herbert and CUB witness, Brian
8 Ross will testify that Peoples Gas was imprudent for
9 failing to use readily available hedging tools to
10 mitigate what was known to be an extremely volatile
11 gas price environment in the period leading up to and
12 during fiscal year 2001. Peoples Gas has, after the
13 fact conservatism about the alleged risks of hedging
14 without a detailed directive from the Commission is
15 simply not credible. That conservatism is
16 contradicted by Peoples Gas' previous hedging
17 activity which was conducted without prior Commission
18 approval, which it now insists as a precondition.

19 Also, Peoples Gas' refusal to hedge to
20 protect customers against price volatility in the
21 2000, 2001 winter is contrasted by the Utility's
22 unregulated affiliates which hedged extensively to

1 protect their revenues. In fact, Peoples Energy, the
2 parent company, had in place a weather insurance
3 policy, a form of hedging, during the reconcilliation
4 period to shore up the revenues of Peoples Gas and
5 North Shore Gas in the event of warmer than normal
6 winters. In short, Peoples Energy and its
7 unregulated affiliates effectively managed gas price
8 risks on behalf of investors but left Peoples Gas'
9 captive customers completely exposed to the vagaries
10 and extremely volatile gas market.

11 Surely, Peoples Gas agrees that its
12 unregulated affiliates and its parent company's use
13 of hedging represented prudence businesses behavior
14 during that winter. Using that reasonable benchmark
15 as a guide, Peoples Gas' failure to protect customers
16 by hedging was clearly imprudent.

17 I would also add that Mr. Mulroy
18 described in his statement the four pricing
19 provisions of the GPAA. He neglected to mention that
20 the GPAA also allowed Peoples Gas to fix prices of --
21 fixed prices or hedge the price of gas under the
22 GPAA, Peoples Gas chose not to do so.

1 It is the fundamental position of the
2 City, CUB, the Attorney General and the Commission
3 Staff that Peoples Gas' recoverable costs cannot be
4 reconciled with the amounts collected from customers
5 in fiscal year 2001; but it is Peoples Gas' burden to
6 demonstrate, based on the evidence of record, that it
7 prudently incurred the costs it charged the rate
8 payers.

9 Peoples Gas can be expected to
10 continue to deny that its decisions and actions were
11 unlawful or imprudent or that rate payers were harmed
12 in the way. Make no mistake, however, the evidence
13 will clearly show that Peoples Gas' customers were
14 harmed and they were harmed substantially. Thank
15 you.

16 JUDGE SAINSOT: You want to take a 10-minute
17 break before you start?

18 MR. KAMINSKI: I only have maybe 2 minutes if
19 that's okay.

20 JUDGE SAINSOT: Okay.

21 MR. KAMINSKI: Thank you, your Honor. Mark
22 Kaminski from the Attorney General's Office on behalf

1 of the people of the State of Illinois. I just have
2 two points.

3 One, Attorney General witness, David
4 Effron's testimony only addressed a few distinct
5 portions of the GPAA and that is the 8 million that
6 has been discussed so far. Mr. Effron offered no
7 testimony outside of those areas.

8 The second point, Mr. Mulroy listed a
9 number of reasons why the -- he feels the GPA was a
10 decent business decision and a decent business deal
11 for Peoples Gas. He also stated that this hearing is
12 based on Peoples Gas' business decisions at the time
13 they were made. So the question is, this PGL -- I'm
14 sorry, has Peoples Gas presented any evidence they
15 considered these factors Mr. Mulroy lists at the time
16 they entered into the contract, the GPAA?

17 If you ask -- I ask you, your Honor,
18 to watch the -- watch for Peoples Gas to introduce
19 any evidence they did any economic analysis that
20 showed that the GPAA was a good deal at the time that
21 they entered into the contract. There is none. A
22 \$600 million contract, not one sheet of paper

1 produced by Peoples Gas did any positive analysis,
2 that alone is imprudent. Thank you. That's all I
3 have.

4 JUDGE SAINSOT: Mr. Kaminski, I just have one
5 question. Is Mr. Mulroy correct that the AG's
6 position is -- only involves \$8 million?

7 MR. KAMINSKI: Your Honor, it is the general
8 practice of our office and others that sometimes when
9 you offer testimony, you're only offering it
10 regarding distinct issues. It is not our position
11 that they only should be disallowed \$8 million, that
12 is just for that portion of the issues that Effron
13 addressed in his testimony.

14 JUDGE SAINSOT: Okay. Thank you. We're going
15 to take a ten-minute break.

16 (Recess taken.)

17 MR. WEGING: We have a schedule updated. I was
18 reminded though, that's not the actual order of
19 witnesses but at least you'll have some idea whose
20 being called on which day.

21 JUDGE SAINSOT: Okay. This is a schedule that
22 you all have?

1 MS. KLYASHEFF: (Nodding head up and down.)

2 JUDGE SAINSOT: Mr. Brady?

3 MR. BRADY: Thank you, good morning, your
4 Honor. Mr. Mulroy and Mr. Jolly has done such a good
5 job of covering the applicable law and the burden of
6 proof and operations that Peoples Gas performs and
7 the relationship between Enron and Peoples that I'm
8 going to forgo that and cut right to the chase.

9 We've all prefiled testimony in this
10 case and there are three trends that are evident in
11 the prefiled testimony. First, that Peoples Gas has
12 entered into transactions and agreements with Enron
13 affiliates and Staff's testimony will show that some
14 of those transactions and those agreements were
15 imprudent.

16 Second, that Peoples Gas affiliates,
17 including Peoples Energy entered into a relationship
18 or a strategic partnership, as Mr. Jolly referred to
19 it, with companies within the Enron family. This
20 was -- this occurred through gas transactions,
21 agreements and profit sharing. Staff's testimony
22 will show that this type of a relationship was

1 adverse -- operated in an manner adverse to the rate
2 payers.

3 Third, and finally, the facts and --
4 testimony will show that the records Peoples Gas kept
5 regarding operations -- regarding gas operations did
6 not comply with uniformed standards of accounts and
7 were deficient with respect to decisions made
8 regarding gas purchases.

9 That being said, I'll give a quick
10 overview of some of the agreements, deals and
11 transactions that were in effect during this period.
12 First, as Mr. Mulroy has thoroughly vented, there was
13 the Gas Purchase and Agency Agreement which was an a
14 agreement between Peoples Gas Enron and North
15 America.

16 Second, there was a storage
17 optimization contract, which was a contract between
18 Peoples Gas and Enron Midwest. This was a contract
19 that allowed Enron Midwest to manage gas, manage
20 storage of gas on behalf of Peoples Gas.

21 Third, there was also an agreement to
22 create a new company, ennovate, LLC whose ultimate

1 parents were Peoples Energy Corporation and Enron
2 North America. In addition, there were -- Enron
3 Midwest also had an arrangement for profit sharing
4 to -- a profit sharing arrangement with Peoples
5 Energy Corporation where Enron Midwest would share
6 its profits.

7 In addition to these contracts and
8 agreements, there was also third party off-system
9 transactions that impacted the operation of the
10 storage field. A substantial number of these
11 transactions involved Enron affiliates. And,
12 finally, there was also a refinery fuel gas deal that
13 involved Peoples's Gas receiving refinery fuel gas
14 from one of its affiliates, PERC through Enron
15 Midwest.

16 This gives a high level overview of
17 what was going on during the reconcilliation period
18 and these are some of the key factors that Staff
19 looked at in proposing its adjustments and its
20 recommendations. What I'd like to show you is a list
21 to break down some -- those adjustments and those
22 recommendations to make it easier for us to follow.

1 Staff has proposed 15 monetary
2 adjustments to the gas charge. As you can see in the
3 top left-hand corner, it totals \$92 million. At the
4 bottom, which you can't necessarily see and we'll get
5 to later, there are 11 non-monetary recommendations
6 that were related to accounting and auditing and so
7 forth. Two of the monetary recommendations have been
8 agreed upon, that being the maintenance of gas and
9 transactions 16.2.

10 Number three, there's the GPAA. This
11 has been fairly -- thoroughly covered. I'll just
12 state that there are at least three reasons that
13 Staff found this to be imprudent. Staff's testimony
14 lays out the fact that the economic -- that Peoples
15 Gas did not perform an economic analysis of the GPAA
16 prior to entering into the agreement, or at least it
17 did not acknowledge one that had been performed
18 within the company.

19 Second, the numerical analysis that
20 Staff performed on the GPAA found it to be an
21 imprudent contract as well as the provisions that
22 Staff reviewed of the contract, also was warranted --

1 to be found to be imprudent.

2 Staff also has two adjustments in the
3 Storage Optimization Contract. The Storage
4 Optimization Contract, well, Staff found the Storage
5 Optimization Contract to be imprudent among other
6 reasons, from the fact that Peoples Gas also did not
7 perform an economic analysis of the impact of this --
8 of this contract to see that this was the best offer
9 that they had received for optimizing the storage.

10 Transactions 19 and 103 are similar
11 transactions and I'll forego going over those here
12 for sake of time and will be addressed within our
13 briefs.

14 8 and 9 are revenues from non-tariff
15 services. These are issues that we had covered or
16 presented in a review in our pretrial memo on Section
17 545 -- 545.40(d). Staff breaks these into two
18 adjustments. One for transactions under the FERC
19 operating statement and one under -- for third party
20 storage exchanges because as the rule requires, these
21 transactions were not pursuant to an ICC tariff that
22 Peoples Gas had filed with the Commission nor were

1 they under a contract that was pursuant to a tariff
2 that they filed with the Commission.

3 In addition, it is Staff's view that
4 this used rate payers -- these exchanges and
5 transactions used rate payer gas.

6 10 and 11 are the refinery fuel gas
7 deal and revenues from the Trunkline deal. These
8 deals were somewhat similar. They happen to share a
9 common theme here where Peoples Gas was actually
10 receiving gas from an affiliate, but through Enron
11 Midwest as an intermediary. In the refinery fuel gas
12 deal, for instance, Peoples Gas had a fairly
13 long-term contract with Citco for Citco to provide
14 them with the refinery fuel gas. That contract ended
15 and then PERC entered into an agreement -- P-E-R-C,
16 an affiliate of Peoples Gas entered into an agreement
17 with Citco to receive refinery fuel gas. That
18 agreement was essentially under the same terms and
19 costs that the -- Peoples Gas had Citco. PERC then
20 sold the gas to Enron Midwest who then increased the
21 costs and passed it on to People's Gas. The Staff
22 feels that this is -- one of the reasons Staff feels

1 this is an imprudent transaction is that Peoples Gas
2 hasn't justified why an affiliate of its was able to
3 receive the same contract that it had received and
4 yet Peoples Gas could not receive it at this time --
5 or at that time.

6 Moving on to Items 12 and 13, ennovate
7 profits, profits that ennovate had sent to Peoples
8 Energy Corporation and Enron North America, it's
9 ultimate parents. Staff believes that was imprudent
10 because ennovate could not have made -- earned its
11 profits without using Peoples Gas facilities, Manlove
12 Storage Field, for instance, nor without using gas --
13 rate payer gas. In Staff's review, we found that
14 some of the transactions had money running through
15 the gas charge. When Staff inquired further as to
16 that money running through the gas charge, we were
17 not provided sufficient information to clearly
18 delineate what transactions should go through the gas
19 charge and what transactions should not, so Staff has
20 recommended that all of the profits that ennovate has
21 earned with respect to its relationship with Peoples
22 Gas be run through the gas charge.

1 Finally, there is -- two adjustments
2 for Manlove Storage Field. One is for third party
3 loans and one is for storage imprudence. The
4 withdrawal of gas from Manlove Storage Field started
5 in approximately -- middle of November and at that
6 time, third parties had gas stored in Manlove Storage
7 Field, it was approximately 7 BCF; by the beginning
8 of January, all 7 BCF of that gas that had been
9 injected into the field had been withdrawn by third
10 parties, yet third parties continued withdrawing gas
11 for the remainder of the -- the remainder of the
12 heating season. Peoples Gas would refer to this as
13 being a loan. In any case, that loan involved the
14 uses of rate payer gas. The impact is -- Staff had
15 to go back -- Peoples Gas had to go out of the
16 market, purchase additional gas to replenish the
17 field at market rates, the daily market rates as
18 opposed to the gas that it purchased previously,
19 which typically is a little cheaper. So due to --
20 Staff views this as being imprudent actions and,
21 therefore, has requested that the profits that third
22 par- -- that the third parties have earned from the

1 loans be run through the gas charge as well as the
2 cost of the purchase of additional gas.

3 And on to 15, adjustment total
4 \$19 million.

5 As you can see B through L are what we
6 would call our recommendations, they're the
7 non-monetary adjustments, not really adjustments,
8 they're just recommendations on operations. Six of
9 them have been agreed upon with the Company, so just
10 looking at -- starting with H and I and J, the
11 internal audit, the management audit and Peoples Gas
12 providing a report on how it intends to comply with
13 Uniformed System of Accounts. These process
14 recommendations relate to the records that Peoples
15 Gas kept and their non-compliance with the Uniformed
16 System of Accounts and the deficiencies as it relates
17 to recording their decision-making process regarding
18 gas purchases.

19 K address the same issue that we had
20 talked about with the revenues from non-tariff
21 services, we are recommending that the Commission
22 direct Peoples Gas to comply with Section 525.40(d)

1 of the Illinois Administrative Code on a going
2 forward basis.

3 And, finally, we are recommending that
4 the 2000 reconcilliation case be reopened due to
5 facts that have come -- new facts which have come to
6 light during there proceeding and investigation which
7 Staff believes impacts the 2000 case.

8 So that being said, your Honor, this
9 is just a quick overview of the adjustments and
10 recommendations that Staff is proposing in this case.
11 The prefiled testimony, the old testimony that will
12 be given this week, I'm sure will affirm these
13 positions. And we ask that you consider them and I'm
14 sure you will find in Staff's favor. Thank you.

15 JUDGE SAINSOT: Okay. Thank you, Mr. Brady.
16 Okay. Before we go any further, I'd like to discuss
17 briefly what would -- whose going to call what
18 witness and whether we should break for lunch now or
19 call your first witness.

20 MS. KLYASHEFF: The Company has three witnesses
21 scheduled for today. Based on estimates of cross for
22 them, certainly, one of them has relatively brief

1 cross. Mr. Puracchio can be done before the lunch
2 break if you want to get moving with that.

3 JUDGE SAINSOT: Why don't we do that.

4 MR. MULROY: You have this; right?

5 JUDGE SAINSOT: Right. But somebody told me it
6 wasn't in the right order.

7 MR. MULROY: You're right.

8 MS. SODERNA: Not necessarily.

9 JUDGE SAINSOT: So I didn't want to assume
10 anything.

11 Okay. Why don't we call
12 Mr. Puracchio.

13 MS. KLYASHEFF: You had asked to be provided
14 with a copy of the witnesses testimony at the
15 hearing. This is Mr. Puracchio's two pieces of
16 testimony.

17 JUDGE SAINSOT: Thank you. Why don't we swear
18 Mr. Puracchio in.

19
20
21
22

1 (Witness sworn.)

2 THOMAS PURACCHIO,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MS. KLYASHEFF:

8 Q Would you state your name and business
9 address for the record, please.

10 A Thomas L. Puracchio, 230 County Road,
11 2800 North, Fischer, Illinois.

12 Q Mr. Puracchio, you have before you a
13 document entitled, Rebuttal Testimony of Thomas L.
14 Puracchio that has been marked for identification as
15 Respondent's Exhibit I and a second document entitled
16 Additional Rebuttal Testimony of Thomas L. Puracchio
17 that has been marked for identification as
18 Respondent's Exhibit M. Do these two documents
19 contain the testimony that you wish to give in this
20 proceeding?

21 A Yes.

22 Q Do you have any changes to make to either

1 one of these documents?

2 A No.

3 Q If I were to ask you the questions in these
4 documents today, would your answers be the same as
5 are included in these documents?

6 A Yes.

7 Q Do you adopt these documents as your sworn
8 testimony in this proceeding?

9 A Yes.

10 MS. KLYASHEFF: Your Honor, both these
11 documents have been filed on E-docket and subject to
12 cross-examination, I move for their admission into
13 evidence in this case. The witness is available for
14 cross-examination.

15 JUDGE SAINSOT: Any objections to the motion?

16 MR. WEGING: None, your Honor.

17 MR. POWELL: None, your Honor.

18 JUDGE SAINSOT: Okay. That being the case,
19 your motion is granted, Miss Klyasheff. Respondent's
20 Exhibit I and Respondent's Exhibit M, which are
21 respectively the rebuttal testimony of Thomas L.
22 Puracchio and the additional rebuttal testimony of

1 Thomas L. Puracchio are admitted into evidence.

2 (Whereupon, Respondent's
3 Exhibit Nos. I and M were
4 admitted into evidence as
5 of this date.)

6 JUDGE SAINSOT: You have no further questions
7 of this witness?

8 MS. KLYASHEFF: No, the Company does not.

9 JUDGE SAINSOT: Any cross?

10 MR. POWELL: Yes, your Honor. For the City of
11 Chicago.

12 CROSS-EXAMINATION

13 BY

14 MR. POWELL:

15 Q Good Morning, Mr. Puracchio.

16 A Good morning.

17 Q My name is Mark Powell. I'm an attorney
18 representing the City of Chicago in this proceeding
19 and I'll just start by asking you some questions
20 about storage inventories at Manlove Field during the
21 winters of 2000 and 2001. In your additional
22 rebuttal testimony at Page 7 beginning at Line 141

1 you state, That the end of February is very near to
2 the end of withdrawal season; is that correct?

3 A Yes.

4 Q You further state, That by the end of
5 February, it is typical for the working inventory at
6 Manlove to be at or near zero; is that correct?

7 A It would be typical for the working
8 inventory to be at or near zero at the end of a
9 withdrawal season, yes, that's correct.

10 Q Was that the case in February of 2001?

11 A I don't recall.

12 Q Was the month end balance for 2000 --
13 February of 2001, 45,000 decatherms?

14 MR. MULROY: I'm sorry, could I hear that
15 again, I didn't get that. Would you read that again?

16 (Record read as requested.)

17 THE WITNESS: It could have been.

18 BY MR. POWELL:

19 Q In operating Manlove Storage, do you set
20 aside specific volumes of storage to serve different
21 customers?

22 A Operationally, no, I do not.

1 Q So the lower the storage inventory at
2 Manlove, the less gas there is to serve all
3 customers; correct?

4 A Yes.

5 Q And withdrawals to serve hub customers
6 reduces the total inventory balance at Manlove;
7 correct?

8 A Yes.

9 Q So the fewer withdrawals to serve hub
10 customers, the greater the volume of gas at Manlove
11 that would be able to serve rate payers; is that
12 correct?

13 A I'm sorry, I didn't hear the first part of
14 that.

15 Q The lower the withdrawals of gas from
16 Manlove that serve -- that are used to serve hub
17 customers, the greater the volume of gas remains at
18 Manlove that can be used to serve rate payers?

19 A You'd have to keep in mind that the hub
20 volumes wouldn't be -- wouldn't have been injected if
21 their customers weren't -- if customers weren't
22 already existing for that gas, so if there -- if the

1 hub volumes were less, there would be less volume in
2 the field to begin with.

3 Q In terms of withdrawals alone, it would be
4 more left over for rate payers if there weren't
5 withdrawals of gas for hub customers?

6 A Operation, I don't make a distinction
7 between hub volumes and utility volumes; but again,
8 my understanding is that if the hub volumes are at a
9 certain level, that those quantities belong to those
10 hub customers, not the utility.

11 Q What is a deliverability decline curve
12 calculation?

13 A The deliverability decline curve
14 calculation is used to determine the point in the
15 season at which -- after a certain level of
16 cumulative withdrawals has occurred, the field can no
17 longer be expected to meet its rated maximum daily
18 capacity.

19 Q Did Peoples Gas prepare a deliverability
20 decline curve calculation for the winter of 2000 to
21 2001?

22 A Yes.

1 Q What did it show?

2 A It showed that the -- I don't recall the
3 exact numbers but it showed that the decline curve --
4 the decline point would be met at somewhere around
5 26,000 decatherms of cumulative withdrawal.

6 Q In your additional rebuttal testimony, on
7 Page 8 beginning at Line 157 you state, The addition
8 of third party volumes of gas has extended Manlove's
9 decline point; correct?

10 A Yes.

11 Q You further testified that that extension
12 of the decline point benefits Peoples Gas rate
13 payers; correct?

14 A Correct.

15 Q And you refer in that statement to your
16 rebuttal testimony to explain that benefit to rate
17 payers; is that correct?

18 A Yes.

19 Q Are you referring specifically to your
20 rebuttal testimony Page 8 beginning at Line 166 where
21 you state that as a result of third party injections,
22 Peoples Gas has the benefit of extended access to

1 full-peakng capability of Manlove?

2 A Yes.

3 Q Did the extension of that decline point
4 provide an economic benefit to Peoples Gas in fiscal
5 year 2001?

6 A I don't know.

7 Q Did the extension of decline point provide
8 an economic benefit to rate payers in fiscal year
9 2001?

10 A My job is operational manager of the field.
11 I don't get involved in the economics of rate payer
12 issues or utility gas issues. I'm concerned only
13 with the aggregate. That winter, as in every winter
14 that we've had additional volume stored, has
15 certainly shifted the decline point outward. And to
16 the extent that the Utility's customers would have
17 needed a peaking service prior to the extended point,
18 they would have realized a benefit.

19 Q An economic benefit?

20 A I think I already answered that.

21 JUDGE SAINSOT: You can clarify, Mr. Puracchio.

22 THE WITNESS: I would presume that any benefit

1 the Utility's customers realized had some -- could be
2 assigned some economic value, yes.

3 BY MR. POWELL:

4 Q But you're not certain?

5 A Again, to the extent that the decline point
6 was extended by additional volumes, there's certainly
7 the possibility that the customers realize an
8 economic benefit to that. They certainly realize an
9 operational benefit from them.

10 Q Is the economic benefit that you're
11 referring to only related to the availability of
12 peaking capability of the field?

13 A I would say yes.

14 MR. POWELL: That's all. Thank you?

15 JUDGE SAINSOT: Any further cross-examination?

16 MR. WEGING: Can I consult with my witness just
17 for a minute?

18 JUDGE SAINSOT: Is there any further
19 cross-examination for this witness just so I have a
20 feel?

21 MR. KAMINSKI: We have none.

22 MR. WEGING: I just have one or two questions.

1 CROSS-EXAMINATION

2 BY

3 MR. WEGING:

4 Q I'm James Weging, I'm representing the
5 Commission Staff in this case or one of the attorneys
6 representing the Commission Staff -- oh, dear, one of
7 these things again -- in your -- in the
8 cross-examination, you indicated that because of the
9 additional usage at the storage field, the decline
10 point adjusted outward. Is that an indication that
11 the -- the amount the decline point would reach would
12 be increased or decreased?

13 A What I meant by that was that the point at
14 which -- the cumulative volume point at which the
15 field would reach that decline point was extended --
16 was increased so that the ability of the field to
17 reach its rated maximum was extended in time or
18 extended in cumulative volume.

19 MR. WEGING: That actually is the only question
20 that I have. Thank you.

21 JUDGE SAINSOT: Any redirect?

22 MS. KLYASHEFF: No redirect.

1 JUDGE SAINSOT: Okay. You're excused. Thank
2 you. Now, before we go further, let's discuss the
3 subject of lunch. Do we have another short witness
4 that we can do and break later?

5 Miss Soderna, do you have any impact
6 on this?

7 MS. SODERNA: My need to eat, you mean? We can
8 go ahead, I'm okay. Thank you.

9 JUDGE SAINSOT: Do you have one more witness?

10 MS. KLYASHEFF: Can we call Witness Zack?

11 JUDGE SAINSOT: Is Zack going to be a short
12 witness?

13 MS. SODERNA: No. Zack --

14 JUDGE SAINSOT: No, why don't we not do Zack.

15 MR. MULROY: Judge, we have -- Valerie Grace is
16 somewhere, as they say, in the building. We think
17 maybe meeting with the Commissioners, you want to
18 take 2 minutes and see if we can find her?

19 JUDGE SAINSOT: Okay. Before we do that, are
20 there a lot of questions for Miss Grace?

21 MR. POWELL: No.

22 JUDGE SAINSOT: Go ahead, then. We're taking a

1 5-minute break.

2 (Recess taken.)

3 JUDGE SAINSOT: Why don't we meet back at 1:30.

4 (Whereupon, a luncheon

5 recess was taken to resume

6 at 1:30 p.m.)

7 (Change of reporters.)

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1 (Change of reporter)

2 JUDGE SAINSOT: Okay. We're back on the record
3 in Docket No. 01-0707. I believe Ms. Klyasheff is
4 going to bring a witness forward.

5 MS. KLYASHEFF: We call Thomas Zack.

6 (Witness sworn.)

7 JUDGE SAINSOT: Okay. Thank you.

8 MS. KLYASHEFF: You granted a motion to strike
9 a portion of Mr. Zack's testimony a few weeks ago.
10 What I handed you does not reflect that. I assume
11 your ruling accommodates the situation.

12 If you want that refiled with those
13 sentences removed, I can do that.

14 What would be your preference?

15 JUDGE SAINSOT: I have brought some special
16 equipment for indentation.

17 MR. BRADY: To mark it?

18 JUDGE SAINSOT: You have a choice of very
19 thick, medium and thin.

20 I think that's really the easiest and
21 fastest way to handle this because I will just have
22 the clerk's office scan -- you don't have to do it

1 right this second but by the end of the day. Okay.

2 MS. KLYASHEFF: I just assumed people may have
3 had cross prepared based on page reference and all
4 that good stuff. So we did not want to change that.

5 JUDGE SAINSOT: Right, and that's what magic
6 markers are for.

7 THOMAS ZACK,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY

12 MS. KLYASHEFF:

13 Q Mr. Zack, you have before you a document
14 entitled with Rebuttal testimony of Thomas E. Zack
15 that has been marked for identification as
16 Respondent's Exhibit G. A document entitled,
17 Additional Rebuttal Testimony of Thomas E. Zack
18 marked for identification as Respondent's Exhibit K.
19 And a third document Entitled Surrebuttal Testimony
20 of Thomas E. Zack marked for identification as
21 Respondent's Exhibit P.

22 Do you have any changes that you wish

1 to make to these documents?

2 A The only change is as I -- as of October
3 1st had a title change to director of gas services
4 and within this period of time I moved from 150 North
5 Michigan Avenue to 130 East Randolph Drive, Chicago.

6 Q And the title change you referenced on
7 October 1st, that was October 1st, 2004?

8 A Yes.

9 Q With those changes as well as the sentences
10 that have been stricken, as we discussed a couple
11 minutes ago, were I to ask you the questions in these
12 documents, would your answers be the same as included
13 in these documents?

14 A Yes, they would.

15 Q You adopt these documents as your sworn
16 testimony in this proceeding?

17 A Yes, I do.

18 MS. KLYASHEFF: Subject to cross-examination, I
19 move for the admission of Respondent's Exhibits G, K
20 and P.

21 JUDGE SAINSOT: Any objection?

22 MS. SODERNA: No objection.

1 JUDGE SAINSOT: Okay. That being the case,
2 Ms. Klyasheff, your motion is granted and
3 Respondent's Exhibits G, K and P are admitted into
4 evidence.

5 (Whereupon, Respondent's
6 Exhibits G, K and P were
7 admitted into evidence.)

8 JUDGE SAINSOT: And for the record, they are
9 the rebuttal testimony of Thomas E. Zack. The
10 additional rebuttal testimony of Thomas E. Zack and
11 the surrebuttal testimony of Thomas E. Zack.

12 Is there anything further, Ms.
13 Klyasheff?

14 MS. KLYASHEFF: No. Thank you.

15 JUDGE SAINSOT: Okay. Cross-examination.

16 MS. SODERNA: I can start.

17 CROSS-EXAMINATION

18 BY

19 MS. SODERNA:

20 Q Good afternoon, Mr. Zack. My name is Julie
21 Soderna and I represent the Citizens Utility Board.

22 A Good afternoon.

1 Q I'm going to start by referring to your
2 additional rebuttal testimony and the subject matter
3 I'm going to speak to is what's referred to as
4 unaccounted for gas, or gas loss and unaccounted for;
5 I believe is the company's term, GLU is the acronym.
6 Is that what --

7 A Yes, that's correct.

8 Q -- the company uses?

9 Okay. I'd like to refer you to
10 page -- the bottom of page 10 and the top of page 11,
11 your additional rebuttal.

12 Generally, is it fair to say that you
13 disagree with Ms. Decker's conclusions about GLU and
14 her recommending disallowance?

15 A Yes.

16 Q And you -- so you disagree with Ms.
17 Decker's claim that the level of GLU during
18 reconciliation period was excessive?

19 A Yes, I disagree with that.

20 Q And specifically at page 11 you comment on
21 the relevance of certain company documents on this
22 topic which were discussed by Ms. Decker in her

1 testimony; is that correct?

2 A Do you have a line reference?

3 Q Yeah, line 214 is where it starts. It's an
4 answer to the question on the previous page. The
5 question is, Ms. Decker refers to e-mails which she
6 says confirm GLU increases, do you agree? And your
7 answer is, Yes, but I disagree with the conclusions
8 that Ms. Decker draws from those e-mails.

9 Do you see that?

10 A Yes.

11 Q So just to go back. It's fair to say then
12 that you disagree with her conclusions about GLU and
13 her recommended disallowance?

14 A Yes.

15 Q Okay. The documents that I'm referring to
16 are City CUB Exhibits 1.12, 1.13 and 1.14. And those
17 are two e-mails and another document called A Gas
18 Loss Work Plan; is that right?

19 A I don't have that document.

20 Q You don't have them in front of you?

21 A No.

22 Q Okay. I can --

1 A What were the document numbers again?

2 Q They're CUB -- City CUB Exhibit 1.12, 1.13

3 and 1.14. I have copies for you.

4 A Okay.

5 MS. SODERNA: I wasn't going to ask specific

6 questions about these documents until a little bit

7 later but I'll go ahead and mark these. We'll mark

8 these as CUB -- City CUB Cross Exhibit 1, 2 and 3.

9 JUDGE SAINSOT: Okay.

10 MS. SODERNA: Respectively.

11 JUDGE SAINSOT: Are you going to enter those

12 into evidence?

13 MS. SODERNA: Well, these are -- will be

14 attached to Ms. Decker's testimony. So I could enter

15 them as cross exhibits or we could just -- they could

16 get in as exhibits for testimony.

17 JUDGE SAINSOT: Whatever you'd prefer.

18 MS. SODERNA: I mean, it may be easier just to

19 enter them as cross exhibits right now so that -- for

20 ease of reference.

21 MR. REDDICK: Your Honor, could we go off the

22 record to see if we can make this simpler.

1 JUDGE SAINSOT: Okay. Ms. Soderna?

2 MS. SODERNA: Sorry. Yeah, those should be
3 labeled as Zack.

4 MR. REDDICK: No, why don't we just --

5 JUDGE SAINSOT: Can we go off the record for a
6 second.

7 (Whereupon, a discussion
8 was had off the record.)

9 BY MS. SODERNA:

10 Q Okay. So do you -- are you familiar with
11 each one of these, the documents, Mr. Zack?

12 A I may have seen these documents before
13 briefly but I can't say that I'm particularly
14 familiar with them. It looks like some of them
15 are -- have dates. It looks like e-mails in the
16 spring of 2001, the time period and at that time I
17 was in customer service.

18 Q Okay. But you did review them in
19 preparation of your testimony; right?

20 A Briefly.

21 Q Okay. Because you state in your testimony
22 that the e-mails confirm that management was aware of

1 the GLU increase in 2001; right?

2 A We were aware of it and we try and keep
3 tabs on it if it does go up so that we can look into
4 what might be causing it, yes.

5 Q Right, but I'm commenting specifically to
6 your -- you were specifically responding to what the
7 e-mails indicate in your testimony?

8 A Yes.

9 Q And -- right. So you're agreeing that the
10 e-mails confirm that management was aware of the GLU
11 increase?

12 A Yes.

13 Q Okay. But what you were referring to, had
14 you seen these documents before? You prepared this
15 testimony or are you saying that you were unfamiliar
16 with them before you prepared testimony?

17 A I think that's what I was saying that
18 before this process I don't think I was getting
19 copies of these but I made some.

20 Q Okay. Also in your testimony you
21 acknowledge that the documents referred to by
22 Ms. Decker, Zack Cross Exhibits 1, 2 and 3, confirm

1 that the company was aware of an increase in GLU
2 during the reconciliation period; correct?

3 A That's correct.

4 Q But you concluded in your testimony,
5 however, that the level of GLU during the
6 reconciliation period was not excessive; is that
7 correct?

8 A That's correct.

9 Q And was this conclusion based upon your
10 review of those documents or your general knowledge
11 of the subject or both?

12 A I think it's the -- largely the general
13 knowledge of the subject that I know that gas loss
14 unaccounted for can fluctuate within periods quite a
15 bit, not only for us but for other utilities. And so
16 to have a year or two where it's higher than another
17 year, is not normal.

18 Q Okay. You argue in your testimony that
19 rather than an excessive increase the GLU level
20 during the reconciliation period wasn't reflective of
21 natural fluctuations in the GLU statistic as you just
22 said; is that fair?

1 A Could you give me a page reference on my
2 testimony.

3 Q Sure. On the same page, page 11 you
4 indicate -- lines 218, 19 and 20 certain fluctuations
5 in the statistic are expected.

6 A That's correct, and that's what -- that's
7 one of the comments I made.

8 Q Right. And also you go so far as to say
9 that the documents, which would be Zack Cross Exhibit
10 1, 2, and 3 referred to in Ms. Decker's testimony,
11 demonstrate that Peoples management was vigilant in
12 its monitoring of GLU; isn't that what you said?

13 A Yes.

14 Q Did you mean that Peoples Management was
15 vigilant in its monitoring GLU during the
16 reconciliation period or sometime later?

17 A I believe it would've been during the
18 reconciliation period as well as after that
19 reconciliation period. Until the -- a period of time
20 was over, you don't know what the amount of GLU is so
21 some of that will be after the fact.

22 Q Okay. All right. Let's look specifically

1 at Cross Exhibit 1 which has been labeled as City CUB
2 Exhibit 1.12. And this is an e-mail as we've
3 previously discussed. The date on that top is
4 March --

5 JUDGE SAINSOT: Ms. Soderna.

6 MS. SODERNA: Yes.

7 JUDGE SAINSOT: It might be helpful if you gave
8 me a copy.

9 MS. SODERNA: Oh, yes. I have one for you.
10 Sorry about that.

11 JUDGE SAINSOT: It's okay.

12 You can continue.

13 BY MS. SODERNA:

14 Q Okay. The -- we're looking at what was
15 previously marked as CUB Exhibit 1.12 which is now
16 Zack Cross Exhibit 1.

17 And the date on the top of the e-mail
18 is March 28th, 2001; is that correct?

19 A Yes.

20 Q And the -- it's a -- there's an e-mail
21 change. It's two e-mails. One e-mail from Sam
22 Fiorela (phonetic) to Kathy -- I'm sorry, from Kathy

1 Donafrito (phonetic) to Sam Fiorela and then a
2 response from Sam Fiorela to Kathy Donafrito; is that
3 correct?

4 A Yes.

5 Q And in the original e-mail, do you see
6 where it says in reference to the question RE, def,
7 d- e- f, of unaccounted for gas brings me to a
8 related concern in the ICC annual report. The amount
9 has skyrocketed from 11.3 million therms to 46.4
10 million therms, calendar year 1999 to 2000; do you
11 see that?

12 A Yes.

13 Q Okay. Then I'll go to Zack Cross Exhibit 2
14 which is -- was previously marked as City CUB Exhibit
15 1.13 and this is another e-mail. And this has
16 been -- this -- the date on this is July 10th, 2003;
17 do you see that?

18 A Yes.

19 Q And this is from Robert Harrington to Tom
20 Nardy (phonetic), et cetera; correct?

21 A Yes, Tom Nardy, Ann Brown.

22 Q Ann Brown, right. Okay.

1 And the second line in the e-mail, the
2 sub- -- the main message. Do you see where it reads,
3 The problem has not gone away. We have 4 percent or
4 about APCF unaccounted for with a current market
5 value of about 40 million; do you see that?

6 A Yes, I do.

7 Q Yet you continue to maintain that the level
8 of GLU during the reconciliation period was merely a
9 result of certain fluctuations of GLU; is that
10 your -- what you maintain?

11 A Yes.

12 Q And these fluctuations in GLU did not
13 represent a pattern of increase of GLU levels from
14 1999 onward?

15 A I don't think I'd characterize them as a --
16 necessarily a pattern, no.

17 Q Okay. How would you characterize that?

18 A Well, I know that they did an increase for
19 one or two years and I believe in 2003 they came
20 down. So for me to call it a pattern of increase, I
21 would say no.

22 Q Would you have called it a pattern if you

1 just looked at the time frame 1999 to 2002 then?

2 A I don't have those percentages in front of
3 me so. . .

4 Q Okay. Let's change gears a little bit.

5 Are you familiar with the term HUB as
6 the company uses that term?

7 A Yes.

8 Q And what is your understanding of that
9 term?

10 A The HUB is part of the midstream segment of
11 the company that sells services to third parties
12 utilizing excess capacity of our MANLOVE storage
13 field which is a rate base asset as well as our --
14 another rate base asset.

15 Q That was a very good definition actually.

16 Okay. Turning back to the issue of
17 GLU during reconciliation period, is it possible that
18 the increase that we were just talking about, the
19 increase in the level of GLU could have been caused
20 by an increase in HUB transactions at that time?

21 A Well, I guess there are many things that
22 are possible. So I suppose it could be some

1 contributor to it but because it's unaccounted for,
2 it's -- you're not accounted for so you really don't
3 know what causes for it are.

4 There are the -- a large part of the
5 contributors to be unaccounted for go to billing
6 estimates and adjustments as well as possible
7 metering errors. So it's hard to say whether the HUB
8 did have an impact but it may be possible.

9 Q And, likewise, along that line, it would be
10 possible then for Enron's gas supply relationship
11 with the company to also cause the GLU percentage to
12 increase since it sounds like a lot -- there are a
13 lot of contributing factors to the increase?

14 MR. MULROY: I'm sorry, may -- could I have the
15 question read back, please.

16 (Whereupon, the record
17 was read as requested.)

18 THE WITNESS: I can't think of a reason why a
19 relationship with another party would impact
20 the unaccounted.

21 BY MS. SODERNA:

22 Q What about the gas supply contract between

1 Enron and Peoples Gas?

2 A Again, I can't see how that would impact
3 it. I mean, unaccounted for is essentially the
4 difference between were sent out and your sales.
5 You've got gas coming into the system through
6 purchases. You've got gas coming into the system
7 through transportation deliveries and you've got
8 storage activity, either withdrawals or injections at
9 MANLOVE that impact the sent out side.

10 And on the sales side, you've got
11 meter readings, a lot of estimates and estimating of
12 unbilled revenues, as well as differences in BTU
13 factors, billing versus sending out. So -- but I
14 don't see how any of that is impacted by a
15 relationship with a particular party.

16 Q Okay. Well, let's look at the next cross
17 -- Zack Cross Exhibit 3 which is -- was previously
18 marked as City CUB Exhibit 1.14.

19 This document is entitled, A Gas Loss
20 Work Plan. Are you familiar with this document?

21 A Again, just as it relates in this case.

22 Q So you did review it in your preparation --

1 A Yes.

2 Q -- for testimony?

3 A I believe so.

4 Q Let's look at the top of the document on
5 the first page. The section entitled, Observations.
6 The first observation -- the first bullet point
7 states that past studies enrolling 12-month totals
8 suggest a fundamental shift, an increase in GLU
9 beginning in late calendar 1999 and continuing. Do
10 you see that?

11 A Yes, I do.

12 Q Would you characterize this observation of
13 a fundamental shift and increase in GLU as merely
14 representing the natural fluctuations in GLU that we
15 discussed earlier?

16 MS. KLYASHEFF: I'm going to object to the
17 question. The witness indicated he reviewed this in
18 the preparation of his testimony but he has not
19 indicated any other familiarity with the document of
20 ownership or any kind of ability to interpret what
21 someone wrote in this document. I don't see a
22 foundation for the question.

1 JUDGE SAINSOT: You know, I'm not quite sure I
2 understood the question. Could you read
3 Ms. Soderna's question back to me.

4 (Whereupon, the record
5 was read as requested.)

6 JUDGE SAINSOT: So what are you trying to get
7 out of this witness?

8 MS. SODERNA: Well, he's been testifying that
9 the increases in GLU during reconciliation period
10 were merely a representation of natural fluctuations
11 in unaccounted for gas. And what the documentation
12 that I'm referring to that he's reviewed in
13 preparation of his testimony indicate that there was
14 a trend, an -- a trend of increasing -- dramatically
15 increasing GLU that was not -- does not appear to be
16 a result of natural fluctuations.

17 And I guess I'm just trying to get to
18 the heart of what the witness -- how he perceives
19 these fluctuations that he testifies to.

20 JUDGE SAINSOT: Well, I'm going to sustain the
21 objection but you can rephrase the -- your question.

22 BY MS. SODERNA:

1 Q We've discussed this subject matter
2 regarding the fluctuations and GLU levels during the
3 reconciliation period shortly before and shortly
4 after in context with these documents that I've shown
5 you and what I'm wondering is if you can, isolating
6 the time period from 1999 till about 2002, which is
7 what we were talking about earlier, do you see
8 those -- the GLU levels during that period of time as
9 just fluctuating upward or representing some kind of
10 trend -- upward trend in GLU levels?

11 A I don't think it represents a trend. I
12 have seen both, within the state of Illinois and
13 nationally, GLU levels up to the 6 percent area. And
14 quite frequently 4 or 5 percent.

15 You also see some years -- and that's
16 on an annual basis. You also see some years where
17 it's negative which seems to go against logic that
18 you sold more gas to the customer than you put in the
19 system; but it happens because of these aberrations
20 year to year. So for me to look at a few years, I
21 think it -- I think it's a reason for the company to
22 take notice so that in case it did become a long-term

1 trend, they were on top of it.

2 But I'm not surprised that over a few
3 year period you have a few numbers that might be
4 higher than the previous year.

5 Q So you don't believe that the documentation
6 that -- or the -- I'm sorry, the e-mails, the prior
7 two e-mails that I showed you indicate a serious
8 concern on behalf of the company regarding a level of
9 GLU?

10 A Well, I think they do have a serious
11 concern because they want to get something before it
12 gets worse or continues.

13 Q But you argue that that's not a problem?
14 That it's something the company should just take note
15 of and perhaps observe?

16 A Well, they should take note and observe and
17 try to determine what issues might be underlying that
18 increase in numbers. But it doesn't surprise me
19 that, again, over just a few year period that you may
20 have some increase in numbers based on what I've
21 seen, you know, looking at more years.

22 Q Well, getting to the underlying problems,

1 let's move on in this document, the Gas Loss Work
2 Plan.

3 At the bottom of the first page
4 there's a section entitled, Areas of Focus; do you
5 see that?

6 A Yes.

7 Q And under that title it states, The root
8 cause of the increase in GLU could be attributed to
9 one or all of the following events in 1999 to 2000;
10 do you see that right there?

11 A Yes.

12 Q Turning to the next page which is the
13 second bullet point under Areas of Focus. The first
14 one on the second page.

15 Do you see where it says, Enron
16 assumption of transportation and delivery of bundled
17 citygates supplies beginning October 1999; do you see
18 that?

19 A Yes, I see that.

20 Q And the second bullet point states that
21 increase in HUB transactions and management of HUB by
22 beginning earlier calendar -- early calendar

1 '9- -- 2000 sorry; do you see that?

2 A Yes.

3 Q And those are, once again, labeled as
4 potential root causes of the increase in GLU.

5 Do these change your comments earlier
6 that HUB transactions and the Enron gas supply
7 relationship may not -- or may not have been a
8 significant cause of the increase in GLU?

9 A Well, I think on the front page leading
10 this, they state that -- they use the term could be.

11 Q Right.

12 A That the root cause of -- that the author
13 of this thought they could be, but, again, I don't
14 know how they would've been.

15 Q Okay. You mentioned on page 11 of your
16 additional rebuttal that the company installed --
17 we're at the same point in your testimony that I
18 referred to earlier. It's page 11, lines 221 to 224.
19 And you mention that the company installed new
20 ultrasonic meters on the compressor discharge piping
21 at MANLOVE as a precaution to improve the accuracy of
22 storage injection measurements; do you see that?

1 A Yes.

2 Q Do you know when these meters were
3 installed?

4 A I believe it was sometime in the summer of
5 2004.

6 Q Okay. When -- and tell me again when the
7 company first became aware of the GLU increase?

8 A I couldn't say for sure when they first
9 became aware. I mean, I think it was probably
10 something being tracked pretty regularly. So I don't
11 know when they, as you say, first became aware. I
12 think they were always aware of what GLU was on an
13 ongoing basis.

14 Q Okay. That's fair to say. But the
15 documents that you reviewed and that you commented on
16 in your testimony, which are the first two e-mails
17 that I mentioned. Those both talk about the increase
18 in GLU starting circa 1999; is that right?

19 A Yes, that's what they're -- seem to be
20 referring to.

21 Q And you agree in your testimony that that
22 indicated that the company was aware of it at that

1 time?

2 A Yes.

3 Q Okay. Other than monitoring and installing
4 these new meters, has the company taken any other
5 action in an effort to reduce GLU levels?

6 A They looked at billing estimating factors.
7 They have a pretty big -- can have a pretty big
8 impact in GLU, well, period to period because so much
9 of what we put on the books is estimated. They've
10 undertaken programs to reduce the number of unread
11 meters for multiple months. The -- they've also, I
12 think, made a special effort to look into gas steals,
13 you know, true unaccounted for physically.
14 Generally, people think in terms of leaks and steals
15 and it could be potentially that with the increase in
16 gas prices that we saw in fiscal 2001, the incentive
17 for customers to bypass the meters which would
18 increase unaccounted for was higher. And that there
19 could've been more steals taking place.

20 JUDGE SAINSOT: So when you're using the word
21 "steals", you're --

22 THE WITNESS: E-a-l-s.

1 JUDGE SAINSOT: Right, theft.

2 THE WITNESS: Theft.

3 JUDGE SAINSOT: Okay. Just wanted to make sure

4 I heard you correctly.

5 THE WITNESS: Because if you're not measuring

6 the gas going through the consumption meter at the

7 premise, it's not getting into your sales.

8 JUDGE SAINSOT: Okay.

9 BY MS. SODERNA:

10 Q And in those potential reasons for the

11 increase in GLU, can you give any sort of estimate

12 about the proportional impact of those examples that

13 you gave on the level of GLU or are those just one of

14 the many potential causes of an increase in GLU?

15 A Yeah, I couldn't -- I could not estimate

16 their impact. I guess -- no, they're one of a number

17 of things but I couldn't estimate the impact, no.

18 Q Do you think that it's possible that

19 steals -- that the steals that we were just

20 mentioning could be worth \$40 million?

21 A I don't know.

22 Q You can't even give a gross estimate?

1 A No, I can't.

2 MS. SODERNA: All right. That's all I have.

3 Thank you.

4 JUDGE SAINSOT: You can proceed, Mr. Jolly.

5 CROSS-EXAMINATION

6 BY

7 MR. JOLLY:

8 Q Mr. Zack, my name is a Ron Jolly. I'm an

9 attorney for the City of Chicago.

10 A Good afternoon.

11 Q How you doing?

12 A Good.

13 Q I'd like to start at your additional

14 rebuttal testimony at page 3, lines 51 through 52.

15 And, excuse me, and there it states that the GLU

16 number for fiscal year 2001 was 3.76; do you see

17 that?

18 A That was 8.3 million decatherms and 3.76

19 percent of -- yes.

20 MR. JOLLY: I want to have marked as Zack Cross

21 Exhibits 4 and 5.

22 JUDGE SAINSOT: We're doing our own marking.

1 MR. JOLLY: Okay.

2 JUDGE SAINSOT: Or rather you're doing your own
3 marking.

4 MR. JOLLY: I can't give it to you?

5 (Whereupon, Zack Cross
6 Exhibit Nos. 4 and 5 were
7 marked for identification
8 by counsel.)

9 BY MR. JOLLY:

10 Q Do you have in front of you, Mr. Zack, what
11 has been marked as Zack Cross Exhibits 4 and 5?

12 A Yes, I do.

13 Q And do you recognize those documents?

14 A Yes.

15 Q And what are they?

16 A They are data request responses in this
17 case.

18 Q And in Zack Cross Exhibit 4, does that show
19 the unaccounted for gas percentages for 2001, 2000
20 and 1999?

21 A Yes.

22 Q And going to Zack Cross Exhibit 5. Does

1 that show the unaccounted for percentages for fiscal
2 years 1998, 2002, 2003, 2004?

3 A Yes.

4 Q And just reading those seriatim in order
5 from the earliest year on, do you agree that
6 according to these two exhibits that for fiscal year
7 1998 Peoples Gas reported an unaccounted for gas
8 percentage of 1.10 percent?

9 A Yes.

10 Q And then jumping to Zack Cross Exhibit 4
11 for fiscal year 1999, the unaccounted for percentage
12 is 1.09 percent?

13 A Yes.

14 Q And then fiscal year 2000, on the same
15 exhibit, is 0.84 percent?

16 A Yes.

17 Q And then if unaccounted for percentage in
18 2001 is 3.76 percent?

19 A That's correct.

20 Q And then jumping back to Cross Exhibit 5
21 for fiscal year 2002, the GLU number is 2.89 percent?

22 A Correct.

1 Q And for 2003 it's 3.83 percent?

2 A Yes.

3 Q And for 2004 it's 1.88 percent?

4 A Yes.

5 Q Would you agree that the GLU total in
6 fiscal year 2001 was four times greater than the GLU
7 total in fiscal year 2000?

8 A Yes.

9 Q And would you agree that the GLU total in
10 fiscal year 2001 was more than three times greater
11 than the GLU total from fiscal year 1999?

12 A Yes.

13 Q And that the GLU -- would you also agree
14 that the GLU total in fiscal year 2001 was more than
15 three times greater than the GLU total in fiscal year
16 1998?

17 A Yes.

18 Q Okay. I'd like to move to, I think, it's
19 your rebuttal testimony page 13. I'm looking for
20 that. Yes, page 13 and at lines 267 through 269 you
21 discuss fiscal storages ahead here; is that correct?

22 A Yes.

1 Q And at lines 270 through 271, you state
2 that the company continued to hedge winter prices to
3 reduce the storage?

4 A Yes.

5 Q What do you mean by that last statement?

6 A I mean, that storage is filled during the
7 summer or non-winter period and the gas is withdrawn
8 during the winter period and usually the prices for
9 gas are much lower in the summer and higher in the
10 winter.

11 Q And so when it's withdrawn in the winter,
12 it has a depressing affect on the overall price of
13 gas?

14 A I'm sorry, could you repeat the question.

15 Q Sure. When gas is withdrawn in the winter,
16 is it your position that -- let me start again.

17 When Peoples Gas withdraws gas in the
18 winter, is it your position that the lower price gas
19 that was injected in the summer then has a moderating
20 affect on the overall price of gas for -- that's
21 delivered to customers in the winter?

22 A I believe that the lower price gas injected

1 in the summer does have a moderating affect -- can
2 have and usually does have a moderating affect in the
3 winter.

4 Q Do you know if the lower price gas that
5 Peoples Gas injected in the summer in fiscal year
6 2001 had a moderating affect on gas that was
7 served -- that was delivered to customers in the
8 winter of 2000, 2001?

9 A I believe it did.

10 Q Okay. You reviewed the testimony of city
11 witness Mr. Herbert in this case; didn't you?

12 A Yes.

13 Q I'm going to show you his testimony. I
14 don't have an extra copy, if you don't mind. I'm
15 going to show you his testimony on page 46 of his
16 direct testimony and if you want to take a few
17 moments. If you could review his testimony on lines
18 1156 through 1177.

19 A Okay.

20 Q Would you agree that Mr. Herbert in his
21 testimony there states that from November 2000
22 through February 2001 Peoples customers paid almost

1 \$10 million more than they would have if Peoples
2 would've purchased all of its gas at index prices?

3 A I'm sorry. Could you repeat the question.

4 Q Sure. Would you agree that in his
5 testimony there, Mr. Herbert testified from November
6 2000 through February 2001 Peoples customers paid
7 almost \$10 million more than they would have if --
8 than they would have if Peoples' would've purchased
9 all of its gas at index prices?

10 A I agree it says that.

11 Q Okay. And did you respond to that
12 testimony and any of the testimony you filed in this
13 case?

14 A Well, I believe there's been -- I believe I
15 responded that storage is a hedge and it has an
16 impact to reducing the cost for customers generally.
17 And I think the -- where the reason he's floating
18 these numbers is because of what's called life of
19 accounting where we replace -- we're making a
20 projection during the wintertime of what the
21 replacement cost for that gas is in the summer. And
22 that that -- I wasn't in the area at the time but

1 that estimate, based on futures prices, may have been
2 high and may have kept the gas charges that customers
3 were billed during that period of time in the winter
4 escalated but the net effect through the year is --
5 in actuality those prices came down in the summer and
6 it was cheaper to put that gas back into storage and
7 in the end the customer did get that benefit.

8 Q Do you agree that customers tend to use
9 more gas in the winter?

10 A Most customers do, yes.

11 Q Do you believe -- and Peoples Gas is
12 service territory. Isn't it true that your -- the
13 amount of gas you send out to customers is far
14 greater in the winter than it is in the summer?

15 A Yes.

16 Q And do you agree that prices tend to be
17 higher -- market prices tend to be higher in the
18 winter than they are in the summer?

19 A They tend to be, yes.

20 Q If Mr. Herbert's testimony is accurate that
21 customers paid \$10 million more from November 2000
22 through February 2001, then would you agree that

1 Peoples storage did not act as a price hedge during
2 that period?

3 A I believe it acted as a price hedge.
4 Whether that was reflected in the gas charge for
5 those months, I'm not sure.

6 Q Okay. Well, do you agree that Peoples --
7 customers bills tend to be higher in the winter
8 months?

9 A They tend to be, yes.

10 Q And customers would benefit most from the
11 hedge effects of storage during the winter months?

12 A No, I wouldn't necessarily agree with that.

13 Q So you don't agree that when your bills are
14 highest that you would benefit more when -- from the
15 hedge effects of storage?

16 A Well, there are options for the customers
17 to levelize those bills that the company buys those
18 options to the customers now. So the fact that they
19 didn't receive that benefit until later in the year,
20 to me, the important item is that they eventually
21 receive that benefit.

22 It's -- we have refundables and

1 recoverable balances that we carry that you can
2 either owe the customers money from an over recovery
3 previously or refund. But those are rolling forward
4 and in the end we reconcile our total gas price. So
5 customers do have the option to levelize those bills.

6 Q Not all customers are on a levelized
7 payment plan? Would you agree with that?

8 A They're not all on a plan, no.

9 Q Do you know what percentage of customers
10 went on a levelized payment plan in 2000, 2001?

11 A I don't know exactly how many.

12 Q Do you think the percentage of customers
13 who were on a payment plan in 2000 and 2001 were
14 smaller than the percentage of customers who are on
15 such plans today?

16 A I don't know.

17 Q Okay. Thank you.

18 Could you turn to page 8 of your
19 rebuttal and at lines 157 through 163 there you cite
20 a portion of the Commissions order in Docket 97-0024;
21 is that right?

22 A Yes.

1 Q And as I understand that quote -- well,
2 that quote was taken -- it's a description of Staff
3 witness, I believe it's Richard Zuraski. I believe
4 it's a statement of -- describing his testimony in
5 that case; is that right?

6 A That's correct.

7 Q Do you know if the Commission relied on
8 Mr. Zuraski's statement in reaching its conclusion in
9 that case?

10 A I can only assume that they did because it
11 was in the order.

12 Q How familiar are you with Commission
13 orders?

14 A I've read a number of them.

15 Q Do -- having read those, do you -- is it
16 true that the Commission quite often summarizes the
17 testimony that's been submitted in the case?

18 A They do. But in this case I believe they
19 stated that they were not going to, at that time, put
20 an obligation on the utilities to hedge and I thought
21 that was consistent with what Mr. Zuraski's stated.

22 MR. JOLLY: I'm going to have marked as an

1 exhibit -- or would like to have marked as a -- what
2 will be titled Zack Cross Exhibit 6.

3 (Whereupon, Zack Cross
4 Exhibit No. 6 was
5 marked for identification
6 by counsel.)

7 BY MR. JOLLY:

8 Q Mr. Zack, have you seen this document?

9 A Yes.

10 Q In fact, in your surrebuttal testimony on
11 page 6, lines 111 through 113 you have a cite from
12 this document, don't you?

13 A Yes.

14 Q And what is that document?

15 A I'm sorry?

16 Q And what is the document? What is Zack
17 Cross Exhibit 6?

18 A NOI managers report from the State of
19 Illinois, Illinois Commerce Commission.

20 Q If you could, if you turn to page 44 of
21 your report. Do you see the block quote towards the
22 bottom of the page there?

1 A Yes.

2 Q Now, that, according to the report, is a
3 question and answer from Docket 97-0024, the same
4 docket that you referred to at page 8 of the rebuttal
5 testimony; is that right?

6 A Repeat the question, please.

7 Q The block quote that appears towards the
8 bottom of page 44 in the NOI report, according to the
9 report, it's from Docket 97-0024 which is the same
10 docket that you referred to at page 8 of your
11 rebuttal testimony; is that right?

12 A Yes.

13 Q And is it true, on that blocked quote,
14 there's a question and answer there?

15 A Yes.

16 Q And would you agree that according to the
17 NOI report the question reads, Are you opposed to
18 hedging? And the answer states -- and this is
19 according to -- again, according to the report. It's
20 Docket 97-0024, rebuttal testimony of Richard J.
21 Zuraski, July 20th, 1998, page 3.

22 In response to the question, Are you

1 opposed to hedging? Mr. Zuraski says, No. In fact,
2 had the company actually hedged more than it did, as
3 advocated by Mr. Ross, I probably would not be saying
4 that the company was imprudent for hedging. The only
5 reason that I add probably to that statement is that
6 a prudence determination would have to look at
7 several of the factors. For instance, the Staff
8 would have to determine if the company what -- knew
9 what it was doing and instituted a valid hedging
10 program in a valid manner. My point is just that
11 hedging is not automatically imprudent.

12 Do you agree with what I've read
13 there?

14 A Yes.

15 Q That that's an accurate statement of -- do
16 you have any reason to disagree with the quote that's
17 presented there on page 44?

18 Do you have any reason -- let me
19 withdraw that question and restate it.

20 Do you have any reason to believe that
21 the question and answer that's presented here at the
22 bottom of page 44 is not accurate? It does not

1 accurately capture what Mr. Zuraski's stated in his
2 testimony in Docket 97-0024?

3 A I don't have any reason to believe that it
4 does -- does or doesn't, I guess.

5 Q Okay. Could you turn to page 6 and -- 6
6 through 7 of your rebuttal testimony.

7 And beginning at the bottom of page 6
8 at lines -- at line 119 carrying over to page 7 on
9 line 147. You reviewed the Commission's orders and
10 gas utilities cases for the year 2000 and for the
11 year 2001; is that right?

12 A Yes.

13 Q Do you know if any Illinois gas utilities
14 used hedges during the years 2000, 2001?

15 A It's my recollection that there was one
16 company that did and I can't recall which company
17 that was at this time.

18 Q If you turn to page 42 of the NOI report,
19 let's -- which has been marked as Zack Cross Exhibit
20 6. There's a footnote, footnote 20 appearing at the
21 bottom of the page. Does that help you with your
22 recollection as to what company that is?

1 A Page? What was the page again?

2 Q Page 42 and there's a footnote at the
3 bottom of the page. It's footnote 20.

4 A Yes, it says it was an Ameren.

5 Q And isn't it true that the footnote states
6 in part that Scott Glaeser of Ameren noted that our
7 strategy is at two-thirds of our winter supply will
8 be hedged in some form or another, whether it be by
9 storage or by fixed price gas or various financial
10 instruments embedded in the current gas supply
11 agreements?

12 A It does say that and in that they are
13 considering storage as a hedge.

14 Q Right. But in addition to storage, they
15 also use, according to that, various financial
16 instruments and fixed price gas contracts; is that
17 right?

18 A Yes.

19 Q Does -- now, Ameren owns more than one
20 utility in Illinois; is that right?

21 A They do today. I don't know how many they
22 had at that time.

1 Q I don't think they own the Illinois Power,
2 but do you know if they own both Citco and Seps
3 (phonetic) at the time?

4 A I don't know.

5 Q Okay. If you could turn to pages 44
6 through 45 of Exhibit 6. There's a paragraph that
7 begins on the bottom of page 44 and carries over to
8 the top of page 45. And in that paragraph, paragraph
9 -- and that paragraph describes, Peoples
10 reconciliation proceeding in ICC Docket 99-00483. Do
11 you agree with that statement?

12 A No, I don't see that. Could --

13 Q Okay. Again, it starts at the bottom of
14 page 44 underneath that block quote that we referred
15 to earlier.

16 A Where it starts another PG- --

17 Q Right. Correct.

18 A -- reconciliation?

19 Okay.

20 Q If you want to just read that paragraph.
21 It carries over to the top of page 45?

22 A Okay. I've read the paragraph.

1 Q And do you agree that that paragraph
2 describes Peoples Gas' reconciliation docket -- in
3 reconciliation case in Docket 99-0483?

4 A Yes.

5 Q And according to that paragraph Peoples Gas
6 used hedges and I assume, I think I said, would be
7 during fiscal year 1999?

8 A That would be fiscal year '99, yes.

9 Q Do you know if Peoples Gas used hedges in
10 fiscal year 1999?

11 A It's my understanding that to a very small
12 degree they did.

13 Q Do you know to what degree that was?

14 A No.

15 Q Did -- before using those hedges, did
16 the -- did Peoples Gas seek Commission approval?

17 A I don't know.

18 Q You don't know, okay.

19 If you could turn to your rebuttal at
20 page 12, lines 256 through 259.

21 Are you there?

22 A Yes.

1 Q In there you discussed uncollectibles; is
2 that right?

3 A Yes.

4 Q Is it correct that in Peoples base rates
5 there's a provision for uncollectibles?

6 A Yes.

7 Q And do you know how much that amount is?

8 A I believe it is about 183 million 22, 23
9 million, within a couple million of that.

10 Q Was Peoples last rate case, Docket 95-0032?

11 A I believe so.

12 MR. JOLLY: Okay. If I may approach the
13 witness?

14 BY MR. JOLLY:

15 Q I'm going to show you what is the final
16 order, Commissions's final order in Docket 95-0032
17 which is the Peoples Gas Light and Coke Company,
18 proposed general increase in rates for gas service.

19 And in the Appendix B, Schedule 1 to
20 that order I think it sets forth the amount of
21 uncollectibles. If you want to take a look at that.

22 A I see it.

1 Q Okay. And what is the number according to
2 that?

3 A In the proform or proposed column for
4 uncollectible accounts it has 26.6 million.

5 Q Okay. Thank you.

6 Would you agree that in some years
7 after this order, Peoples Gas has collected -- has
8 incurred lower amounts of uncollectibles than \$26.6
9 million?

10 A I don't know.

11 Q You don't know.

12 A I think there was a data request that --
13 well. . .

14 Q What's that you said?

15 A I found it.

16 Q Okay. And it's the response to City Data
17 Request 1.122; is that right?

18 A That's correct.

19 Q And it shows that uncollectible amounts
20 from 1995 through 200- -- well, through 2001
21 fluctuated; is that correct?

22 A That's correct.

1 Q And than in 2002, 2003 the uncollectible
2 amounts increased by a significant amount?

3 A That's correct.

4 Q Okay. But uncollectible amounts were as
5 low as 16.85 -- \$16,859,535 in the year 2000?

6 A That's right.

7 Q Okay. One other series of questions.

8 If you could turn to page 12, lines
9 256 through 259 of your additional rebuttal
10 testimony. And that -- your testimony beginning at
11 page -- beginning on the previous page at the end of
12 -- bottom of page 11 and carrying over. You're
13 responding to Ms. Decker's and Ms. Hathorn's
14 recommendation that Peoples Gas be required to refund
15 money that -- refund earnings made by Innovate during
16 the reconciliation year; is that right?

17 A Yes.

18 Q Did Innovate use Peoples Gas' assets during
19 the reconciliation year?

20 A I wasn't in the area at the time so I'm
21 probably not best to answer that. My testimony is
22 primarily pointing to the fact that they were trying

1 to -- there was a proposal to take the profits of
2 another entity and disallow those costs. And I was
3 making the point that a number of marketers we -- we
4 expect them to be in business to make money and that
5 other marketers would use our assets in their
6 business.

7 Q With respect to that last point, do you
8 think it makes any difference if the marketer using
9 Peoples Gas' system isn't affiliated with Peoples
10 Gas?

11 A I think -- I'd have to leave that to legal
12 interpretation.

13 MR. JOLLY: I have nothing further. Thank you.

14 And I would like to move into evidence
15 City Cross Exhibits 4, 5, 6.

16 MS. SODERNA: Zack Cross Exhibits.

17 MR. JOLLY: Sorry, Zack Cross Exhibits 4, 5,
18 and 6.

19 JUDGE SAINSOT: Any objections?

20 MS. KLYASHEFF: No.

21 MS. SODERNA: I'm sorry, your Honor, I forgot.
22 I'd like to request permission to enter Zack Cross

1 Exhibits 1, 2, and 3 into evidence.

2 JUDGE SAINSOT: Any objection?

3 MS. KLYASHEFF: No, but can we go off the
4 record for one minute?

5 JUDGE SAINSOT: Sure.

6 (Whereupon, a discussion
7 was had off the record.)

8 JUDGE SAINSOT: Okay. Just for the record, I'm
9 going to formally grant Ms. Soderna's and Mr. Jolly's
10 motion and go over what exactly I am admitting so
11 that anyone who wants to know.

12 Okay. City CUB Exhibit 1 of -- let me
13 start at the beginning. I am granting Mr. Jolly's
14 motion to admit Zack Cross 4, 5, and 6, and those are
15 a -- Response to a Staff Data Request NG2.014, and
16 Zack Response to CUB Data Request 21.001, and 6 is
17 the NOI manager's report dated April 17th, 2001.
18 Okay. That's Mr. Jolly.

19 Zack Exhibit 1 is an e-mail that
20 starts off with a bogus account on the top of the
21 page. Zack Exhibit 2 is another e-mail that the
22 sender is the gentleman named Harrington, Robert

1 Harrington. Zack Exhibit No. 3 is a gas loss work --
2 work claim.

3 (Whereupon, Zack Cross
4 Exhibit Nos. 1 through 6
5 were admitted into evidence.)

6 JUDGE SAINSOT: Okay. Who's going next? You
7 are? Okay.

8 CROSS-EXAMINATION

9 BY

10 MR. BRADY:

11 Q Good afternoon, Zack -- Tom. I'm Sean
12 Brady.

13 A Good afternoon.

14 Q I have in front of me your rebuttal
15 testimony which is Exhibit G and as I understand, you
16 have corrected that as far as your title is now
17 director of gas and light services; is that correct?

18 A That's correct.

19 Q Okay. Are your responsibilities still
20 directing activities of gas supply planning, gas
21 supply administration, gas control and gas storage
22 departments from both respondent and North Shore Gas

1 Company?

2 A No, they change a little bit. The -- with
3 the reorganization the gas light planning and gas
4 administration departments were merged and they do
5 report to me still. Gas control and gas storage no
6 longer report to me and then HUB services reports to
7 me.

8 Q All right. Thank you.

9 Would you -- you had described earlier
10 with Ms. Soderna -- I'm sorry, Mrs. -- do you recall
11 that? You were describing what HUB services was?

12 A Yes.

13 Q Do you know which department, at the time
14 of the reconciliation period, kept track of the
15 inventory levels used for HUB services?

16 A I believe it was gas supply administration.
17 But, again, I wasn't there so I can't say for
18 certain.

19 Q Let me ask -- did you say gas supply
20 services --

21 A If I can --

22 Q -- administration?

1 A I meant gas light administration.

2 Q Okay. Which is under your direction
3 currently; correct?

4 A Yes.

5 Q Does the current gas supply administration
6 keep track of inventory levels in MANLOVE?

7 A Yes, along with the HUB services area.

8 Q Okay. And is there any reason to believe
9 that that may have -- that function may have changed
10 since 2001?

11 A It may have. There was a number of changes
12 at the company.

13 Q Do you know how gas supply administration
14 keeps track of the volume of gas that HUB services
15 was using during the reconciliation period?

16 A I don't know how they were keeping track of
17 it, no.

18 Q Has the method in which gas supply
19 administration has been keeping track of the
20 inventory levels changed since you've been in your
21 position as director of gas supply?

22 MS. KLYASHEFF: Objection. Relevance of

1 something that happened after the reconciliation
2 period.

3 JUDGE SAINSOT: What's the relevance?

4 MR. BRADY: I'm trying to understand how
5 Peoples Gas - the gas supply tracked -- the gas
6 supply department or division tracked the gas supply.

7 It's my understanding that Mr. Zack
8 has replaced Mr. Delara (phonetic) who was the gas
9 supply director at the time of the reconciliation
10 period. It is also my understanding there's -- that
11 Mr. Delara is no longer submitting testimony in this
12 case. And so I thought Mr. Zack would be the one who
13 might have that information as far as how gas supply
14 kept track of inventory levels for that period.

15 JUDGE SAINSOT: And he's saying he doesn't
16 know. I mean, is that -- am I wrong, Counsel, that
17 that's what he just said before the answer?

18 MS. KLYASHEFF: No, the way he said it was
19 before he was in the department and he doesn't know.

20 JUDGE SAINSOT: Yeah. Yeah. I just don't see
21 how you can get it out of that witness.

22 MR. BRADY: All right. Then I'll move on.

1 JUDGE SAINSOT: Okay.

2 BY MR. BRADY:

3 Q Mr. Zack, if you could turn to Exhibit G,
4 page 17. At the bottom of the paragraph on the
5 bottom of page 17 starting with, at least in my
6 documents, starting with line number 364. You were
7 talking about the analysis of Mr. Effron and
8 Mr. Rearden.

9 Do you see that in your testimony?

10 A Yes.

11 Q And then in the third sentence in the
12 paragraph it says, Such relatively small proposed
13 adjustments in the context of a complex contract
14 represents a difference of opinion about the cost and
15 benefits of a contract in the states -- staffs and
16 the AG's struck conclusions that the GPAA is clearly
17 imprudent. Do you see that?

18 A I see that.

19 Q What criteria were you using when you made
20 this statement that this represents more than a
21 difference of opinion or that it represents a
22 difference of opinion?

1 A The context of that statement has to do
2 with there was a lot of detailed analysis purported
3 to be done by Staff to get to a disallowance amount
4 that amounted to in the area of 1 -- 1 to 2 percent
5 that they stated that the contract amount was
6 imprudent by.

7 Given the context that in the 2000
8 case another witness for Staff, who performed, again,
9 according to the order, a full review and used the
10 correct standard for prudence and he had a difference
11 of opinion, thought their gas costs were prudent and
12 he must've looked at this contract, because it was 75
13 percent of our gas cost that year. Given that
14 context that that's a difference of opinion and that
15 given what we knew at the time this contract -- that
16 is, scenarios that Mr. Graves will test- -- has
17 testified to in three of the four Sera cases
18 (phonetic), it showed that the contract was prudent.

19 To then use such a sharp pencil to say
20 that you were 1 or 2 percent away from it being
21 prudent, does not seem reasonable. It, to me, falls
22 under -- it shows that there are differences of

1 opinion even within Staff and by -- when we used the
2 information that was available at the time.

3 Q To your knowledge, is there a -- has the
4 ICC actually set a standard defining difference of
5 opinion?

6 A Not to my knowledge.

7 Q Do you believe that the ICC should have a
8 standard that defines what a difference of opinion is
9 for PGA cases?

10 A I don't know that I have an opinion about
11 that.

12 Q Do you see in the same page, Mr. Zack,
13 lines 360 to 363?

14 A Yes.

15 Q An example of -- if a consumer bought a one
16 dollar item at one store, a similar item for 99 cents
17 on the street, the purchase of a one dollar item
18 would be considered imprudent; do you see that?

19 A I see that.

20 Q Do you recall your logic that you had used
21 in developing that opinion at this time?

22 A Again, it was just a relative comparison

1 that they were saying it was a -- within a couple of
2 percent of being -- 1 or 2 percent of being prudent.

3 Q Let me ask you a hypothetical to try and
4 understand what you are saying here.

5 What if a consumer were to buy a car
6 and one dealer's list price was \$50,000 and across
7 the street another dealer, who had the same car, was
8 selling it for 1 percent less, \$49,500.

9 Would it be prudent for the consumer
10 to walk across the street to purchase that car?

11 A It wouldn't be imprudent for him not to, I
12 would believe.

13 Q But that wasn't my question. My question
14 was, is it imprudent for the consumer to walk across
15 the street to purchase a car that was \$500 or 1
16 percent less expensive?

17 A I guess in my view either option would be
18 prudent.

19 Q And why would either option be prudent?

20 A Because to that consumer it -- there may be
21 other variables involved that that consumer may
22 have -- be considering.

1 MR. BRADY: Staff has no further questions,
2 your Honor.

3 JUDGE SAINSOT: Anyone else?

4 I have a few questions.

5 EXAMINATION

6 BY

7 JUDGE SAINSOT:

8 Q Mr. Zack, I'm looking at Respondent's
9 Exhibit G, which is your rebuttal testimony, on page
10 18, and you're talking through several pages or at
11 least more than two, about Mr. Lounsberry's
12 testimony.

13 And, you know, just for the record
14 Mr. Lounsberry has -- his pretrial testimony concerns
15 what went on in the previous reconciliation.

16 Were you involved in that previous
17 reconciliation?

18 A No, I wasn't.

19 Q So you have no personal knowledge of the
20 banter between Staff and Peoples' witnesses?

21 A No, not of that. No.

22 Q Or any discussions either?

1 A No.

2 Q So just -- and for the record, how do you
3 know whether Staff moved for an extension of time in
4 that case?

5 A That's from what I've been told, from
6 within the company.

7 Q So someone told you that Staff -- you have
8 no personal knowledge?

9 A Of that, no.

10 Q And this sentence here, While the
11 Commission and the Administrative Law Judge directed
12 that the case be handled expeditiously, you don't
13 have any personal knowledge about that either?

14 A No.

15 Q Do you know who the administrative law
16 judges were who handled this case?

17 A No.

18 Q Okay. You've testified about the Enron
19 contract. What -- did you have any role in
20 negotiating that contract?

21 A No, I did not.

22 Q Okay. I just have one more question, if

1 you know.

2 What companies did Peoples Gas Light
3 and Coke Company buy their -- buy its bypass pump?

4 A I believe it was numerous companies but I
5 couldn't tell you who they were.

6 Q Could you tell me who the heavy hitters
7 were, who they bought most of their gas from?

8 A I can't say that I saw a review of anything
9 for 2001. I've seen them for 2003 and 4, but not
10 2001.

11 JUDGE SAINSOT: Okay. Thank you.

12 Any redirect?

13 MS. KLYASHEFF: I just have a few questions.

14 REDIRECT EXAMINATION

15 BY

16 MS. KLYASHEFF:

17 Q Mr. Zack, could you reference Zack Cross
18 Exhibit 3, which Ms. Soderna introduced.

19 A I've got it.

20 Q Did you author this document?

21 A No.

22 Q Do you know when it was authored?

1 A No.

2 Q Could you please take a look at Zack Cross
3 Exhibits 4 and 5.

4 Do you recall Ms. Soderna asking you
5 if the HUB services may have had an effect on
6 unaccounted for gas?

7 A Yes.

8 Q Do these exhibits show unaccounted for, for
9 the years 1998 through 2004?

10 A Yes.

11 Q Did Peoples Gas have a HUB during those
12 years?

13 A Yes.

14 Q Did Peoples Gas have a contract with Enron
15 North America during fiscal 2000 and fiscal 2001?

16 A Yes.

17 Q Did it have that same contract with
18 Occidental Energy Marketing during fiscal 2002
19 through 2004?

20 A Yes.

21 Q In response to some questions from
22 Mr. Jolly you talked about customers having the

1 ability to levelize bills.

2 Could you explain what you mean by
3 that.

4 A There is a budget payment plan that
5 forecasts what a customer would use over a yearly
6 period and tries to come up with a monthly payment
7 number, that's levelized.

8 Q And, finally, Zack Cross Exhibit 6. You
9 answered some questions regarding footnote 20 on page
10 42.

11 Could you please read the sentence
12 immediately preceding the footnote reference.

13 JUDGE SAINSOT: This is page 20, Ms. Klyasheff?

14 MS. KLYASHEFF: Page 42 which includes footnote
15 20.

16 THE WITNESS: It reads, While some Illinois
17 utilities have used such measures for relatively
18 limited portions of their expected winter demand
19 levels, generally speaking utilities have not been
20 hedging to more substantial degrees.

21 MS. KLYASHEFF: I have nothing further.

22 JUDGE SAINSOT: Any recross?

1 Okay. Mr. Jolly.

2 REXCROSS-EXAMINATION

3 BY

4 MR. JOLLY:

5 Q Just sticking with that footnote 20. Is it
6 true that the first statement in the footnote, is one
7 apparent exception to this rule, is Ameren?

8 A It does state that.

9 Q And by that sentence, do you interpret that
10 to mean that Ameren, in fact, did use hedging to more
11 substantial degrees?

12 A I would interpret it that way.

13 Q Are you familiar with Mr. Graves' testimony
14 in this case? Mr. Graves' testimony?

15 A Oh, yes.

16 Q And is it true that he testified that he
17 believes it would be prudent for a utility to have
18 the Commission preapprove it before it hedges?

19 A He has -- he did testify that it would be
20 prudent to get guidelines from the Commission to
21 hedge.

22 Q Do you know if Ameren received Commission

1 guidelines before they hedged?

2 A No, I don't.

3 MR. JOLLY: Okay. I have nothing further.

4 JUDGE SAINSOT: Okay. You're excused,

5 Mr. Zack.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 JUDGE SAINSOT: We're going to take a ten

9 minute break.

10 (Whereupon, a recess was taken.)

11 JUDGE SAINSOT: You can proceed, Ms. Klyasheff.

12 MS. KLYASHEFF: The company calls Valerie

13 Grace.

14 (Witness sworn.)

15 JUDGE SAINSOT: Okay.

16 VALERIE GRACE,

17 called as a witness herein, having been first duly

18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MS. KLYASHEFF:

22 Q Please state your name and business address

1 for the record.

2 A Valerie H. Grace, 130 East Randolph Drive,
3 Chicago, Illinois 60601.

4 Q You have a document before you entitled
5 Direct Testimony of Valerie H. Grace that has been
6 marked for identification as Respondent's Exhibit A.
7 A second document entitled Additional Direct
8 Testimony of Valerie H. Grace marked for
9 identification as Respondent's Exhibit D. A third
10 document entitled Rebuttal Testimony of Valerie H.
11 Grace marked for identification as Respondent's
12 Exhibit J, and a fourth document entitled Surrebuttal
13 Testimony of Valerie H. Grace marked for
14 identification as Respondent's Exhibit Q.

15 Are there any changes that you wish to
16 make to any of these documents?

17 A No.

18 Q Do these documents include the testimony
19 that you wish to give in this proceeding?

20 A Yes, they do.

21 Q If I were to ask you the questions included
22 in each of these documents, would your answers be the

1 same as included in those documents?

2 A Yes, they would.

3 Q Do you adopt these documents as your sworn
4 testimony in this proceeding?

5 A Yes, I do.

6 Q I now show you a document that was marked
7 for identification as Exhibit 1, a second document
8 that was identified as Exhibit 16 and a third
9 document identified as Exhibit 17.

10 Were these exhibits prepared by you or
11 under your supervision and direction?

12 A Yes, they were.

13 Q Were these the documents to which you refer
14 by reference to these exhibits numbers in your
15 testimony?

16 A Yes, they are.

17 JUDGE SAINSOT: Ms. Klyasheff, could you give
18 me the number to those exhibits again.

19 MS. KLYASHEFF: Exhibit 1, which was included
20 with Ms. Grace's direct testimony; and Exhibit 16 and
21 17 which were referenced in her additional -- I'm
22 sorry, in her rebuttal testimony.

1 JUDGE SAINSOT: Thank you.

2 MS. KLYASHEFF: Subject to your
3 cross-examination, I move for admission of
4 Respondent's Exhibits A, D, J and Q and Exhibits 1,
5 16 and 17 and the witness is available for
6 cross-examination.

7 JUDGE SAINSOT: Any objection?

8 MR. POWELL: No, your Honor.

9 MR. BRADY: None from Staff.

10 JUDGE SAINSOT: Okay. That being the case,
11 your motion is granted and Respondent's Exhibit A, D,
12 J and Q, as well as Respondent's Exhibits 1 and 16
13 and 17 are admitted into evidence.

14 (Whereupon, Respondent's
15 Exhibits A, D, J and Q
16 were admitted into evidence.)

17 (Whereupon, Respondent's
18 Exhibit Nos. 1, 16 and 17
19 were admitted into evidence.)

20 JUDGE SAINSOT: And for the record, Exhibit A
21 is Direct Testimony of Valerie Grace; Exhibit D is
22 the Additional Direct Testimony of Valerie Grace;

1 Exhibit J is Rebuttal Testimony of Valerie Grace;
2 Exhibit Q is the Surrebuttal Testimony of Valerie
3 Grace, and Exhibits 1, 16 and 17 are attachments to
4 Exhibits -- to Exhibit A and Exhibit J.

5 Okay. Thank you.

6 Anything further, Ms. Klyasheff?

7 MS. KLYASHEFF: No. Thank you.

8 JUDGE SAINSOT: Any cross-examination?

9 MR. POWELL: Yes, your Honor, on behalf of the
10 City.

11 JUDGE SAINSOT: Okay. Proceed.

12 CROSS-EXAMINATION

13 BY

14 MR. POWELL:

15 Q Good afternoon, Ms. Grace.

16 A Good afternoon.

17 Q My name is Mark Powell and I'm an attorney
18 representing the City of Chicago in this matter. And
19 I'd like to start by asking you some questions about
20 the weighted average cost of gas.

21 A Yes.

22 Q In that connection I have an exhibit I'd

1 like to show you that has been marked as Grace Cross
2 Exhibit 1.

3 Do you have Grace Cross Exhibit 1 in
4 front of you?

5 A Yes, I do.

6 Q Do you recognize it?

7 A Yes.

8 Q What is it?

9 A It's a response to City data request 1.074.

10 Q And how do you recognize it?

11 A It was a data request that was submitted
12 quite some time ago. So I have vague recollection of
13 it.

14 Q Did you prepare the response?

15 A Yes, quite some time ago.

16 MR. POWELL: Your Honor, I'd like to move for
17 the admission of Grace Cross Exhibit 1 into evidence.

18 JUDGE SAINSOT: Any objection?

19 MS. KLYASHEFF: No.

20 JUDGE SAINSOT: Okay. That being the case,
21 your motion is granted, Counsel. And Grace Cross
22 Exhibit 1, which is response to a data request

1 labeled as City 1.074 is admitted into evidence.

2

3 (Whereupon, Grace Cross
4 Exhibit No. 1 was
5 admitted into evidence.)

6 JUDGE SAINSOT: You can proceed.

7 BY MR. POWELL:

8 Q I'd like to turn your attention to the
9 first -- or it's the second page of the exhibit.
10 It's the first page, page of the attachment labeled
11 Response To Data Request: CTY 1.074.
12 Do you see that?

13 A Yes.

14 Q In that first page of the attachment to
15 Peoples Gas response illustrates how the weighted
16 average cost of gas or weighted COG is calculated; is
17 that correct?

18 A Yes.

19 Q And weighted COG is included in the gas
20 charge used in computing month and bills; is that
21 correct?

22 A There's a formula. The company's schedule

1 of rates, rider two, that describes how costs are
2 computed for inclusion of the companies billed.

3 This is similar to that. I'd have to
4 do a side by side comparison to tell you if it's
5 identical.

6 Q Does the weighted COG, is it a factor used
7 in computing monthly gas bills and rate. . .

8 A It depends on how you're defining this
9 weighted COG. There's a -- Commission rules, part
10 525 outlines how gas costs are determined for
11 customers for inclusion in their monthly bills.
12 That's reflected in our tariff.

13 Looking at this it appears to include
14 all of those elements. But, again, absent the side
15 by side comparison, I can't tell you that.

16 Q Okay. As shown on this first page of the
17 attachment, one of the components of the weighted COG
18 is purchases of gas; is that correct?

19 A Yes.

20 Q What does that term purchases include?

21 A It includes purchases of all sources of gas
22 supply including purchases on the index contracts.

1 Q So it would include, for example, gas
2 purchased during the reconciliation period from Enron
3 under the --

4 A Right.

5 Q -- gas purchasing agency agreement;
6 correct?

7 A And it also includes purchases -- purchase
8 on the stock market as well.

9 Q Okay.

10 A So all purchases.

11 Q For purposes of calculating the weighted
12 COG for a given month, how do you determine the cost
13 of a particular purchase?

14 A Are you talking about how it's determined
15 for billing to customers and the gas charge or are
16 you talking about for purposes of this data response?

17 Q For purposes of this data response.

18 A For purpose of this data response, a
19 weighted average gas cost includes purchases,
20 liability for redelivery of customer owned gas, gas
21 withdrawn and injected into storage, penalty
22 imbalance charge revenues, cash-out revenues,

1 cash-out costs and those dollars are divided by a
2 total of your retail sales and sales does provide it
3 to your transportation customers that's company
4 owned.

5 Q What I'm wondering is how -- what costs for
6 purchases -- under the category of purchases in this
7 first page of the attachment, what cost is used in
8 this weighted COG calculation? Is it a straight
9 pass-through if you pay X dollars?

10 A If this is consistent with our gas charge.
11 Our gas charge is a pass-through to customers with no
12 profit.

13 Q That's as to purchases; correct?

14 A Purchases.

15 Q Okay. So if gas were purchased from Enron
16 under the GPAA the cost for weighted COG calculations
17 that would be used for purchases would be whatever
18 Peoples Gas paid Enron under the GPAA; correct?

19 A Customers pay what -- what we pay with no
20 markup for profit.

21 Q Okay. Another component of the weighted
22 COG is gas withdrawn from storage; isn't that

1 correct?

2 A Yes.

3 Q And how is that amount determined?

4 A The gas is priced at the LIFO rate.

5 Q And how is the LIFO rate determined for a
6 given month?

7 A You look at your purchases for an entire
8 year so that includes purchases made for every month
9 during the reconciliation year. It includes
10 purchases in the winter that reflect higher winter
11 price and purchases that are made during the summer
12 that reflects lower summer prices.

13 Q So if I understand this correctly, a
14 September LIFO calculation would use only actual gas
15 costs and volumes; is that correct?

16 A That's correct.

17 Q Whereas an October LIFO calculation you use
18 only four gas costs and volumes; is that correct?

19 A That's correct.

20 Q So you testified that the cost of gas
21 withdrawn from storage to serve rate payers is priced
22 at the current months LIFO price?

1 A What testimony are you indicating? Can you
2 give me a page?

3 Q I'm sorry. I mean, in your testimony here
4 today.

5 A Yes.

6 Q Is LIFO account the use of price the cost
7 of gas withdrawn to serve any other customers?

8 A Only our retail sales customers and those
9 customers that purchase company owned gas, our
10 transportation customers.

11 Q I'd like to show you another exhibit that
12 has been marked as Grace Cross Exhibit 2.

13 JUDGE SAINSOT: A copy for me?

14 Thank you.

15 BY MR. POWELL:

16 Q Ms. Grace, do you recog- -- or do you have
17 Grace Cross Exhibit 2 in front of you?

18 A Yes, I do.

19 Q Do you recognize it?

20 A Yes, I do.

21 Q What is it?

22 A It's Response To a Data Request from the

1 City, No. 1.114.

2 Q Did you prepare the response?

3 A It was prepared under my direction.

4 MR. POWELL: Your Honor, at this time, I'd move
5 for the -- I'd like to move for the introduction of
6 Cross Grace -- excuse me, Cross Exhibit 2 into
7 evidence.

8 JUDGE SAINSOT: Any objection?

9 MS. KLYASHEFF: No.

10 JUDGE SAINSOT: Okay. That being the case,
11 Counsel, Grace Cross Exhibit 2, which is a response
12 to City data request No. 1.114 is admitted into
13 evidence.

14 (Whereupon, Grace Cross
15 Exhibit No. 2 was
16 admitted into evidence.)

17 BY MR. POWELL:

18 Q I'd like to refer you to the second page of
19 the attached response which is a worksheet, and on
20 that page there is a column marked LIFO to the far
21 right; do you see that?

22 A Yes, I'm on the right page now.

1 Q Okay. Are the amounts listed in that
2 column marked LIFO, the LIFO prices that were in
3 effect for each month, fiscal year 2001?

4 A Yes, those are the LIFO prices that were
5 estimated for each year of fiscal 2001.

6 Q I'd now like to ask you to turn back to the
7 first page of the attachment. The farthest column to
8 the left on that page is marked withdrawals; is that
9 correct?

10 A Yes.

11 Q And that column includes estimated volumes
12 of gas withdrawn from storage for each month of
13 fiscal year 2001; correct?

14 A Yes.

15 Q The next column to the right shows the LIFO
16 price applied to the withdrawal volumes for each
17 month; is that correct?

18 A That's correct.

19 Q And the next column to the right of that is
20 the total cost of each months withdrawal; is that
21 correct?

22 A That's correct.

1 Q And the amounts in the third column, the
2 cost column, the farthest column to the right in that
3 set of three, the amounts there determined by
4 multiplying the corresponding amounts listed in the
5 two columns to the left of that column; is that
6 correct?

7 A That's correct.

8 Q Would you agree then that the greater the
9 amounts in the first two columns, the greater the
10 cost amount listed in the third column?

11 A That's multiplication, yes.

12 Q Would you also agree, subject to check,
13 that more than 98 percent of storage withdrawals for
14 fiscal year 2001 occurred between November 2000 and
15 March 2001?

16 A I can't agree to that. I'm not sure. I
17 don't know where that number comes from.

18 Q Would you agree that the vast majority,
19 according to this chart, of withdrawals in fiscal
20 year 2001, occur between November 2000 and March
21 2001?

22 A Yes.

1 Q And that period is commonly referred to as
2 the heating season; is that correct?

3 A Generally, yes.

4 Q According to this exhibit, Grace Cross
5 Exhibit No. 2, LIFO prices reached the highest
6 level -- highest fiscal year 2001 levels in January
7 of 2001; is that correct?

8 A That's correct.

9 Q And the next highest level for fiscal year
10 2001 is the February 2001 LIFO price --

11 A It appears --

12 Q -- is that correct?

13 A No, that's not correct.

14 Q Oh, excuse me. The March 2001 is the next
15 highest LIFO price?

16 A Yes, that's correct.

17 Q And after that, the next highest price --
18 LIFO price for fiscal year 2001 is the February 2001
19 price; correct?

20 A That's correct.

21 Q I'd like to ask you to turn to page 3,
22 lines 43 to 46 of your surrebuttal testimony.

1 A Could you repeat the page.

2 Q Page 3, the beginning of line 43,
3 surrebuttal testimony.

4 Do you see where you testify that only
5 injections and withdrawals accounted for as retail
6 sales customers gas are included in the determination
7 of the LIFO price?

8 A Yes.

9 Q Do you --

10 JUDGE SAINSOT: Counsel, where is this?

11 MR. POWELL: This is -- your Honor, it's page 3
12 of Ms. Grace's surrebuttal testimony. It's beginning
13 at line 43.

14 JUDGE SAINSOT: Okay.

15 BY MR. POWELL:

16 Q Do you keep track of withdrawals for HUB
17 customers?

18 A HUB customers are not retail sales
19 customers so the answer is no.

20 Q How do you know -- if that's the case, how
21 do you know the amount of gas that is injected and
22 withdrawn for retail customers?

1 A Because we know what supply we buy for our
2 retail sales customers to supply their needs so there
3 are separate accounting for gas just purchased for
4 your retail sales customers versus those that are not
5 retail sales customers.

6 Q So you do track withdrawals from storage to
7 serve rate payers; correct?

8 A Yes.

9 Q But you do not track withdrawals from
10 storage to serve HUB customers; is that correct?

11 A Again, my testimony centers on the gas
12 charge, was this just charge that's paid by retail
13 sales customers. It does not include any accounting
14 for any sales made to HUB customers.

15 Q So, in other words, when gas is withdrawn
16 from Enron -- customer there's no cost assigned to
17 that gas that's entered on the books?

18 A It may be entered on the books for those
19 customers but not the retail sales customers that are
20 the subject of this proceeding.

21 Q Is there a separate set of books?

22 A I'm not familiar with their accounting or

1 HUB customers at all.

2 Q All right. I'd like to take you back to
3 the exhibits for a minute and by that I mean Grace
4 Cross Exhibit 1 and Grace Cross Exhibit 2.

5 Turning to Grace Cross Exhibit 1. The
6 second page of the attached response to the -- to
7 City data request 1.074. Includes a cost for gas
8 withdrawn from storage; is that correct?

9 A Yes, it does.

10 Q And that amount is 140,609 -- excuse me,
11 140,699,157.54; is that correct?

12 A Yes.

13 Q And turning now to Grace Cross Exhibit 2 on
14 the first page of the attached response.

15 A Mm-hmm.

16 Q For December 2000 there is a cost figure in
17 the third column from the right --

18 A Mm-hmm.

19 Q -- correct?

20 A Yes.

21 Q And that figure is 71,000 -- excuse me,
22 \$71,766,922; is that correct?

1 A That's correct.

2 Q Why is it that that amount is not the same
3 as the amount listed for December 2000 as gas
4 withdrawn from storage in Grace Cross Exhibit 1?

5 A Can I refer to an actual gas charge?
6 Probably sometimes there's timing issues.

7 Q Of course.

8 A I believe, looking at these two -- just
9 looking at the magnitude of cost, I think part of it
10 might be that one is, at least Cross Exhibit 2, is
11 labeled Commodity Cost of Gas.

12 I'm not sure. I need to read the
13 response to Cross Exhibit 2 to see if this is only
14 commodity cost or if this reflects commodity and
15 non-commodity.

16 And the request states the weighted
17 average cost of gas delivered to regulated customers,
18 that's provided in company's data request item 1.070.

19 So give me a moment.

20 Just looking at this, subject to
21 check, I think that Cross Exhibit 1 may be based on
22 an actual. I'm not -- I'd have to check it. It may

1 be based on an actual.

2 Looking at Cross Exhibit 2, we use
3 estimated activity to calculate the LIFO price. So I
4 think one is an actual and one is an estimate but,
5 again, it's subject to check.

6 I think we're comparing apples to
7 oranges here. I don't think it's a direct
8 comparison.

9 Q Okay. I just have one final question for
10 you.

11 Is it among your job responsibilities
12 to track gas costs for withdrawals for HUB customers?

13 A No.

14 MR. POWELL: That's all I have. Thank you.

15 JUDGE SAINSOT: Anyone else?

16 Any redirect?

17 MS. KLYASHEFF: A couple of questions.

18 REDIRECT EXAMINATION

19 BY

20 MS. KLYASHEFF:

21 Q Ms. Grace, you answered several questions
22 about LIFO.

1 A Yes.

2 Q How to derive that rate. And in some
3 answers you were referring to forecast or estimated
4 costs.

5 How do actual costs work their way
6 into the LIFO rate?

7 A When actual costs are booked, they're
8 trued-up for the difference between actuals and your
9 forecaster costs. So every month there's a true-up
10 of gas costs.

11 Q And when do you have the actual costs for
12 the entire reconciliation year?

13 A The actual costs of an entire
14 reconciliation year is available after September
15 closes.

16 Q You were asked some questions about storage
17 withdrawals and HUB withdrawals. During the
18 reconciliation year what department were you in?

19 A I moved around a lot so give me a minute to
20 think.

21 I believe in the reconciliation year I
22 was in the rates department.

1 Q For purposes of gas charge calculation, is
2 it your department that's responsible for tracking
3 storage activity or is that number provided to you by
4 another area?

5 A Storage numbers are provided to us by
6 another area.

7 MS. KLYASHEFF: Thank you.

8 JUDGE SAINSOT: I just have one minor question.

9 EXAMINATION

10 BY

11 JUDGE SAINSOT:

12 Q Ms. Grace, could you explain what a true-up
13 is for the record?

14 A Yes. You make a LIFO calculation based on
15 your estimated costs, say, for October through
16 September. When your October gas costs are booked,
17 you would also -- you do the second LIFO calculation
18 that reflects October as an actual and November
19 through September as an estimate.

20 You take the difference between that
21 LIFO calculation and the previous calculation and
22 that difference is applied to storage so storage is

1 always trued-up for the actual cost of gas on a
2 monthly basis.

3 JUDGE SAINSOT: Okay. Thank you.

4 Anything further for Ms. Grace?

5 MS. KLYASHEFF: No more redirect.

6 JUDGE SAINSOT: Okay. You can step down.

7 Thank you, Ms. Grace.

8 (Witness excused)

9 JUDGE SAINSOT: Okay. Can we go off the record
10 for just a second.

11 (Whereupon, a discussion
12 was had off the record.)

13 MS. SODERNA: I'd like to call Brian Ross.

14 (Witness sworn.)

15 BRIAN ROSS,
16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MS. SODERNA:

21 Q Please state your name and business address
22 for the record.

1 A My name is Brian Ross. My business address
2 is 2634 Vincent Avenue North, Minneapolis, Minnesota.

3 Q And did you prepare written testimony for
4 this proceeding?

5 A I did.

6 Q Do you have before you what has been marked
7 as CUB Exhibit 1 for identification which is the
8 direct testimony of Brian Ross?

9 A Yes, I do.

10 Q Does this document consist of 21 pages of
11 questions and answers?

12 A Yes, it does.

13 Q Did you prepare this document for this
14 proceeding?

15 A I did.

16 Q Is it your understanding that this document
17 was filed by CUB on e-docket on August 7th, 2003?

18 A Yes.

19 Q Do you have any changes or corrections to
20 your direct testimony?

21 A There is one change on page 17. There is a
22 table that has total wages, total winter purchases

1 scenario. The third column, the correct title should
2 be, Total Purchases; not firm purchases.

3 MS. SODERNA: That correction has -- was not --
4 has not yet been made on the version you have, Judge.

5 JUDGE SAINSOT: I just put it on there unless
6 somebody has an objection.

7 MS. SODERNA: Great.

8 BY MS. SODERNA:

9 Q And if I ask you the questions set forth in
10 your direct testimony today, would your answers be
11 the same?

12 A Yes, they would.

13 Q And attached to CUB Exhibit 1 is CUB
14 Exhibit 1.1 which is your resume; is that correct?

15 A Yes.

16 Q Do you also have before you what has been
17 marked as CUB Exhibit 3 for identification?

18 A Yes.

19 Q And that document is entitled Rebuttal
20 Testimony of Brian Ross?

21 A Yes.

22 Q And this document consists of 40 pages of

1 questions and answers; is that correct?

2 A That's correct.

3 Q Did you prepare this document for this
4 proceeding?

5 A I did.

6 Q And is it your understanding that this
7 document was filed by CUB on e-docket on February
8 18th, 2005?

9 A Yes.

10 Q Do you have any changes or corrections to
11 your direct -- to your rebuttal testimony?

12 A I do not.

13 Q And if I were to ask you the questions set
14 forth in your rebuttal testimony today, would your
15 answers be the same?

16 A Yes, they would.

17 Q And are there any attachments to your
18 rebuttal testimony?

19 A Yes, there's a couple of attachments, two
20 attachments --

21 Q Right.

22 A -- I believe.

1 Q And do those consist of data responses from
2 the company?

3 A Yes.

4 MS. SODERNA: All right. I would like to move
5 for admission of CUB Exhibits 1, 1.1 and CUB Exhibit
6 3 and 3.1 and 3.2, each attachment respectively
7 subject to cross-examination.

8 JUDGE SAINSOT: Okay. You're calling
9 attachments 1 and 2, 3.1 and 3.2?

10 MS. SODERNA: Right. Sorry, I -- they weren't
11 labeled that way on the version that I gave you, but
12 right.

13 JUDGE SAINSOT: Okay.

14 MS. SODERNA: So I did have them in front of
15 me.

16 JUDGE SAINSOT: Okay. That's all right. I
17 just want to make sure that we're talking about the
18 same documents.

19 Is there any objection?

20 MS. KLYASHEFF: No.

21 JUDGE SAINSOT: Okay.

22 MS. SODERNA: I tender Mr. Ross for

1 cross-examination.

2 JUDGE SAINSOT: Okay. I'm just going to
3 formally grant your motion and note for the record
4 that CUB Exhibit 1.0 and 3.0 which are the direct and
5 rebuttal testimony of Brian Ross are admitted into
6 evidence. CUB Exhibit 1.1 which is Mr. Ross' CV is
7 also admitted into evidence. And, finally, CUB
8 Exhibit 3.1 and 3.2 which are data request responses
9 proffered by Mr. Graves and Mr. Wear, respectively,
10 are admitted into evidence.

11 (Whereupon, CUB Exhibit
12 Nos. 1.0, 3.0, 1.1, 3.1 and 3.2
13 were admitted into evidence.)

14 JUDGE SAINSOT: Okay. You're tendering for
15 cross-examination?

16 MS. SODERNA: Yes. Thank you.

17 JUDGE SAINSOT: Okay. Any cross-examination?

18 MS. KLYASHEFF: The company has a few
19 questions.

20 JUDGE SAINSOT: Okay. Proceed.

21

22

1 CROSS-EXAMINATION

2 BY

3 MS. KLYASHEFF:

4 Q Good afternoon, Mr. Ross.

5 A Good afternoon.

6 Q My name is Mary Klyasheff and I'm
7 representing Peoples Gas and I have a couple of
8 questions directed to your direct testimony.

9 In particular, on page 3 of your
10 direct testimony you discussed and quoted from a New
11 York Public Service Commission Decision. Was this a
12 decision that was issued following the winter of
13 1996, 1997?

14 A Yes, it was.

15 Q And am I correct that the New York Public
16 Service Commission required most gas utilities to
17 both file fixed price service tariffs and to
18 explicitly address price risks in their gas supply
19 claim?

20 A Sub- -- yes, as part of this order. Yes.

21 Q Do you know, did the Illinois Commerce
22 Commission conduct and kind of proceeding or notice

1 of inquiry after that same winter?

2 A They conducted a notice of inquiry.

3 Q Do you agree that the Illinois Commerce
4 Commission did not adopt policy language similar to
5 what the New York Commission adopted?

6 A The Illinois Commerce Commission decided to
7 address these issues in the context of PGA
8 reconciliation hearings.

9 Q So is it correct that the Illinois Commerce
10 Commission did not require the type of steps or
11 remedies that the New York Commission required of its
12 utilities?

13 A The ICC did not issue a general policy but
14 instead agreed to address it within the context of
15 PGA reconciliation hearings.

16 Q When you prepared your direct testimony,
17 were you aware of any Illinois Commission orders
18 requiring fixed price rate designs?

19 A There were none requiring fixed place --
20 fixed price rate designs.

21 MS. KLYASHEFF: I have no further questions.

22 Thank you.

1 JUDGE SAINSOT: I have a few questions, very
2 few.

3 EXAMINATION

4 BY

5 JUDGE SAINSOT:

6 Q Mr. Ross, you used the terms put in a call
7 in your testimony.

8 A Yes.

9 Q Could you just define them for the record.

10 A Well, they're financial derivatives where a
11 contract owner can -- or a -- can sell a contract for
12 its time or haul the contract before its time,
13 depending on which side of the contract they're on,
14 and it's considered a financial derivative. It can
15 be bought and sold like other financial agreements.

16 Q So "put" is the sale of the contract before
17 its time?

18 A Yes.

19 Q And the call is vice versa?

20 A Correct.

21 Q In your direct testimony on page 13 you
22 said Peoples Gas Light and Coke Company took

1 advantage of flexible pricing that was available in
2 the Enron contract. But it did so in the '01, '02
3 meetings.

4 You were a little vague. Could you
5 tell me what that means.

6 A I'm sorry, where is that -- where in the
7 testimony? What page?

8 Q Page 13 and -- of your direct about line 6.

9 A Yeah, that's in the shaded proprietary --

10 Q Right.

11 A -- section.

12 Okay. The GPA- -- some provisions
13 reflect the pricing that allow the company to
14 renegotiate certain components of its contract and it
15 took advantage of such pricing components to
16 effectively do some hedging and to get some pricing
17 other than first in one price and indexed related
18 pricing.

19 Q What pricing did it get? What price --
20 pricing did it get?

21 A I -- my understanding is that this was
22 related to the hedging program the company put in

1 place. This is the -- the revisions that were made
2 to address the hedging program they put in place in
3 May of 2005. I don't know the specific components or
4 the prices to that. I just know the company had
5 responded that they had changed the pricing in 2005
6 with the new hedging program they put into place,
7 they did that.

8 Q Okay.

9 A So I did not investigate any further in
10 terms of the specifics other than put that in place.

11 JUDGE SAINSOT: Okay. Thanks. I have no
12 further questions.

13 THE WITNESS: 2000 -- I'm sorry, I'm saying
14 2005. Yeah, in the current year, 2001. Sorry.

15 JUDGE SAINSOT: Right. I understand.

16 THE WITNESS: Okay.

17 JUDGE SAINSOT: Any redirect?

18 MS. SODERNA: No.

19 JUDGE SAINSOT: Any re- -- I'm sorry, right.

20 MS. KLYASHEFF: No.

21 MS. SODERNA: No redirect.

22 JUDGE SAINSOT: Okay. So, Mr. Ross, you are

1 excused from this docket. However, to accommodate
2 your schedule, we are going to stop Peoples Gas Light
3 and Coke Company case for today and proceed with the
4 North Shore Gas one.

5 (Whereupon, the above-entitled
6 matter was continued to
7 April 19, 2005, at 10:00 a.m.,)

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